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These Cases, as to their arrangement, are promiscuously given as they were taken from the Papers of the Person to whom they belonged, yet the Reader may, by referring to the Index (which is a full Explanation of the Matter of each Case) with Ease and Dispatch, find any Thing that he may want therein.

Temple,
June 1, 1776.

ADVERTISEMENT.

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WITH THE

Opinions of Eminent Council thereon.

C A S E.

4th April, 1720.—**T**HE Dean and Chapter of *Westminster*, by two several leases demised several messuages in *Newgate-street*, to *S. G.* widow, for the term of forty years, in trust for *J. D.* and *Elizabeth* his wife.

5th April, 1720.—By indenture tripartite between the said *J. D.* and *Elizabeth* his wife of the first part, the said *S. G.* of the second part, and *S. S.* of the third part; the said *J. D.* and *Elizabeth* his wife, and the said *S. G.* in consideration of 1000*l.* paid by *S. S.* to *J. D.* and his wife, demised the said premises to the said *S. S.* for the term of 39 years and 3 quarters of a year, at a pepper corn rent, subject to redemption upon payment of the said 1000*l.* and interest on the 19th of *June* then next ensuing.

28th April, 1720.—The Dean and Chapter of *St. Paul* demised by lease to the said *S. G.* in trust for the said *J. D.* and *Elizabeth* his wife, several messuages lying in *Newgate-market*, and *Warwick-lane*, for forty years.

The said 1000*l.* not being paid upon the first mortgage, and some interest remaining due thereon; *J. D.* applied to *S. S.* to advance him the further sum of 400*l.* his wife *E. D.* being then dead.

15th September, 1725.—By indenture between the said *J. D.* of the first part, *S. G.* of the second part, and the said *S. S.* and *T. B.* of the third part, in consideration of 400*l.* paid to the said *J. D.* by the said *S. S.* and 5*s.* by him paid to the said *S. G.* she the said *S. G.* by the direction and appointment of the said *J. D.* and also the said *J. D.* assigned the said messuages and premises, held of the Dean and Chapter of *St. Paul* in *London*, to the said *S. S.* for the residue of the said term of 40 years, from *Michaelmas*, 1719, by the said lease of the 20th April, 1720, granted, and in consideration of the said sum of 400*l.* and of the said 1000*l.* and interest then due to the said *S. S.* and of 5*s.* to the said *S. G.* paid by the said *T. B.* the said *S. G.* and also the said *J. D.* assigned by the nomination and appointment of the said *S. S.* unto the said *T. B.* the several messuages and heredita-

menis,

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ments, held of the said Dean and Chapter of *Westminster*, for the residue of the two several terms of 40 years, each commencing at Michaelmas 1719, by the said two several leases, granted to the said *S. G.* by the Dean and Chapter of *Westminster*, in trust for the said *S. S.* subject to the provisoe therein contained; whereby it was agreed that if the said *J. D.* should pay unto the said *S. S.* as well the said sum of 400*l.* with the interest at 5 per cent. per annum; as also the said sum of 1000*l.* with such interest as was then, or should become due for the same, on the 15th of *March* then next; then the said *S. S.* and *T. B.* should assign unto the said *J. D.* all the premises thereby assigned to the said *S. S.* and *T. B.* or by the said indenture tripartite demised to *S. S.*.

The said *J. D.* afterwards died intestate, and 30th of *July*, 1729, administration was granted to his daughter *A. B.—n.*, wife of *J. B.—n.*, who thereby became intitled to the equity of redemption, of the said mortgaged premises.

The said *S. S.* died intestate, and administration was granted to *J. B.—d.*, and the said *T. B.—d.*, and *E. S.* his widow, who by virtue thereof, became intitled to the said monies due on the said mortgages.

7th *December*, 1731.—The said *J. B.—n.*, and *Ann* his wife, having an opportunity to renew the said two leases with the Dean and Chapter of *Westminster*, did for that purpose apply to the said *J. B.—d.*, *T. B.—d.*, and *E. S.* to surrender the said two leases, and to advance out of the estate of the said *S. S.* 100*l.* to defray the fine and other expences of such renewal, and agreed that the said new leases should be in the name of *S. W.* in trust for securing the money due, and to become due on the said mortgages, and also the said 100*l.* with interest; and that the said messuages and premises held by the Dean and Chapter of *St. Paul*, should also be a security for the money due on the said mortgages, and the said 100*l.* to be advanced, and upon those terms, the said *J. B.—d.*, *T. B.—d.*, and *E. S.* surrendered, or delivered up the said two old leases that had been granted by the Dean and Chapter of *Westminster*, to the said *S. G.* and advanced to the said *J. B.—n.*, and *Ann* his wife, the said 100*l.* which was expended in payment of the fine and other charges or expences upon renewing of the two leases. And thereupon the said Dean and Chapter of *Westminster*, by their indenture of lease, dated 7th *December*, 1731, did demise to the said *S. W.* all that messuage or tenement therein mentioned to be situate in *Newgate-street, London*, and wherein *G. D.* a grocer then dwelt, for the term of forty years, from Michaelmas then last past.

7th *December*, 1731.—The said Dean and Chapter of *Westminster*, by one other indenture of lease, for the consideration therein mentioned, did demise to the said *S. W.* three several messuages, near *Newgate-market*, to hold for the term of forty years, from Michaelmas then last past.

The said leases were so made to *S. W.* in trust, and to the intent that the same might be assigned, to the said *J. B.—d.*, *T. B.—d.*, and *E. S.* the administratrix of the said *S. S.* or as they should direct, for securing the payment of the principal money and interest then due, and

and to grow due upon the aforesaid several mortgages made by the said *J. D.*, and *Elizabeth* his wife, and *S. G.* their trustee, and the said *J. D.* and *S. G.* to the said *S. S.* and to the said *T. B.* in trust for the said *S. S.*.

18th January, 1731.—By indenture quadruplicate, made between the said *J. B—n*, and *Ann* his wife, who was administratrix of the said *J. D.* of the first part, the said *S. W.* of the second part, the said *J. B—d*, *T. B—d*, and *E. S.* of the third part, and *T. B.* of the fourth part, reciting to the effect before recited, and that there then remained due of the monies secured by the indenture, of the 15th September, 1725, the sum of 1155*l.* 8*s.* 2*d.* and for the principal and interest of the said 100*l.* advanced for renewing the said two leases, the sum of 102*l.* 11*s.* 4*d.* amounting together to 1257*l.* 19*s.* 6*d.* and that two ninth parts thereof being 279*l.* 11*s.* 0*d.* did belong to the said *J. B—d*, four other ninth parts thereof being 559*l.* 2*s.* 0*d.* to the said *T. B—d*, and the three remaining ninth parts thereof being 419*l.* 6*s.* 6*d.* did belong to the said *E. S.* and it had been agreed, that as well the said messuages and premises held of the Dean and Chapter of *Westminster*, as also the said messuages and premises held of the said Dean and Chapter of *St. Paul*, should be assigned to the said *T. B.* in trust for securing the payment of the said monies. It is witnessed, that in consideration of the said 1257*l.* 19*s.* 6*d.* so due from the said *J. B—n*, and *Ann* his wife, and for the better securing to the said *J. B—d*, *T. B—d*, and *E. S.* the payment thereof in the proportions before mentioned, with interest, and of 5*s.* paid to *S. W.* *J. B—n*, and *Ann* his wife, by *T. B.* the said *S. W.* in pursuance of the trust reposed in him, and at the request, and by and with the consent and direction of *J. B—n*, and *Ann* his wife, and also the said *J. B—n*, and *Ann* his wife, at the nomination and appointment of the said *J. B—d*, *T. B—d*, and *E. S.* did assign to *T. B.* the said four messuages and premises, by the said two indentures of lease, of the 7th December, 1731, demised by the said Dean and Chapter of *Westminster*, to the said *S. W.* for all the then remainder of the two several terms of 40 years, and 40 years, by the said leases respectively granted, subject to the rents and covenants in the said leases reserved and contained, in trust for the said *J. B—d*, *T. B—d*, and *E. S.* And it was further witnessed that for the considerations aforesaid, and for the better securing the payment of the several sums of money before mentioned, with interest to the said *J. B—d*, *T. B—d*, and *E. S.* and also in consideration of 5*s.* paid to the said *J. B—n*, and *Ann* his wife, *J. B—d*, *T. B—d*, and *E. S.* by *T. B.* they the said *J. B—n*, and *Ann* his wife, by the direction and appointment of the said *J. B—d*, *T. B—d*, and *E. S.* and also the said *J. B—d*, *T. B—d*, and *E. S.* did assign to the said *T. B.* the four messuages, which were then held under, or by virtue of the said lease of the 28th April, 1720, and made by the Dean and Chapter of *St. Paul*, in *London*, for all the remainder of the said term of 40 years, by the said lease granted to the said *S. G.* subject to the rents and covenants in the said lease contained, in trust for the said *J. B—d*, *T. B—d*, and *E. S.* their

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executors, administrators, and assigns, under a proviso, that if the said *J. B—n*, and *Ann* his wife, should pay to the said *J. B—d*, 279*l.* 11*s.* 0*d.* with interest, and to *T. B—d*, 559*l.* 2*s.* 0*d.* with interest, and to *E. S.* 449*l.* 6*s.* 6*d.* with interest, on the 18th of *March* then next, then the said *T. B.* should assign the premises to the said *J. B.* and *Ann* his wife, or as they should direct.

J. B—n, and *Ann* his wife, did agree with the Dean and Chapter of *St. Paul*, for the renewing the said lease dated the 28th *April*, 1720, made to *S. G.* and in order to enable the said Dean and Chapter to grant such new lease, they the said *J. B—d*, *T. B—d*, and *E. S.* and *J. B—n*, and *Ann* his wife, did surrender and yield up the said lease to the said Dean and Chapter of *St. Paul*.

22d *December*, 1732.—By indenture of lease, the Dean and Chapter of *St. Paul* did devile to *N. A.* the four messuages in *Warwick Lane* and *Newgate Market*, for the term of forty years from *Michaelmas* then last past, at the rent of five pounds *per annum*.

The last lease was granted to the said *N. A.* in trust for the said *J. B—d*, *T. B—d*, and *E. S.* for better securing to them the payment of the said several principal sums of money and interest.

The said *J. B—n* died in *March* 1733.

20th *June*, 1733.—By indenture sextuplicate, made between the said *Ann B—n*, widow, only child and administratrix of the said *J. D.* deceased, and also administratrix of the said *J. B—n*, her late husband, deceased, of the first part, the said *S. W.* of the second, the said *N. A.* of the third, the said *J. B—d*, and *T. B—d*, and *E. S.* administrators of the said *S. S.* deceased, of the fourth, the said *T. B.* of the fifth, and *J. S.* Esq; of the sixth part, in consideration of 299*l.* 16*s.* 0*d.* to the said *J. B—d*, and of 559*l.* 12*s.* 0*d.* to the said *T. B—d*, and of 449*l.* 13*s.* 11*d.* to the said *E. S.* respectively, paid by the said *J. S.* which payments were respectively made by the direction and appointment of the said *Ann B—n*, and in consequence of the further sum of 150*l.* 17*s.* 1*d.* also paid by the said *J. S.* to the said *A. B—n*, which said sums of 299*l.* 16*s.* 0*d.* 559*l.* 12*s.* 2*d.* 449*l.* 13*s.* 11*d.* and 150*l.* 17*s.* 1*d.* make together 1500*l.* and in consideration of 5*s.* to *T. B.* and *S. W.* likewise paid by the said *J. S.* he the said *T. B.* at the request and by the direction and appointment as well of the said *J. B—d*, *T. B—n*, and *E. S.* as of the said *Ann B—n*, and *S. W.* and also they the said *J. B—d*, *T. B—d*, *E. S.* *Ann B—n*, and *S. W.* did assign to the said *J. S.* the said four messuages, or tenements and premises, in and by the said two recited indentures of lease of the 7th of *December*, 1731, demised by the Dean and Chapter of *Westminster* to the said *S. W.* to hold the said four messuages or tenements, and premises, for the remainder of the said two several terms of 40 years, and 40 years, by the said two leases of the 7th of *December* 1731, granted, subject to the payment of the several rents and performances of the covenants in the said two leases reserved.

It is further witnessed, that for the considerations aforesaid, the said *N. A.* at the request and by the direction and appointment as well of the said *T. B.* *J. B—d*, *T. B—n*, and *E. S.* as of the said *Ann B—n*,

B—n,

B—n, and also they the said *T. B. J. B—d, T. H—d, E. S. and Ann B—n*, did assign to the said *J. S.* the said four messuages or tenements and premises by the said indenture of lease, dated 22d December last, demised by the said Dean and Chapter of St. Paul, to the said *N. A.* to hold the said premises, with the appurtenances, unto the said *J. S.* for the residue of the said term of 40 years, in and by the said lease, dated 22d December last, from the Dean and Chapter of St. Paul, to the said *N. A.* granted and demised as aforesaid, subject nevertheless to the payment of the rent and performance of the covenants therein reserved, under a proviso, that if the said *Ann B—n* should pay to *J. S.* the said sum of 1500*l.* with interest, at 4*l. 10 s. 0 d. per cent. per annum*, on the 30th of June next, the said *J. S.* should assign the premises to the said *Ann B—n*, or as she should direct.

N. B. Mrs. *B—n* has since married *W. G.* and they are now sued by *B—n*'s creditors, who pretend the said leases are assets liable to their demands.

Query. Whether the premises, or any, and what part are subject in law or equity to the payments of the debts of the said *J. B—n*?

Opinion. I conceive that if a husband and wife are possessed of a leasehold estate in right of the wife, the husband has a power over it to dispose of it; but if he makes no such disposition, it will go to the survivor of them. And it appears by *Hob. 3.* that though the husband purchases the fee-simple, the lease shall not be extinct thereby. I conceive likewise, that if husband and wife mortgage such leasehold estate, they will be entitled to the equity of redemption, just in the same manner as they were before entitled to the lease, that is, it will belong to the husband and wife, and the survivor of them. But the chief question in this case is, Whether by the surrender of the old leases by the mortgagee, and the taking new ones, the title be so altered as that the equity of redemption of the new lease shall belong to the husband only? And as to this, I apprehend that if the mortgagee had, without the consent of the husband and wife, surrendered the old leases and taken new ones, the equity of redemption of the new leases would belong to the husband and wife, just in the same manner as the equity of redemption of the old ones; and the surrender being made with their consent, I think will make no difference. If, indeed, in the declaration of the trusts of the new leases, the proviso had been, that upon payment of the mortgage-money the mortgagee should assign to the husband, his executors or administrators, this might have barred the wife of the equity of redemption. But I observe Mr. *B—n* and his wife join in the declaration of the trusts of the new lease, and the proviso is, that upon payment of the mortgage-money the mortgagee shall assign to Mr. *B—n* and his wife, or as they shall direct: so that, upon the whole, I am of opinion, that Mrs. *B—n*, having survived her husband, is entitled to the equity of redemption of the new leases by survivorship, and consequently that the same are not liable in law or equity to the payment of Mr. *B—n*'s debts. But as great doubts have been made upon the case, I should think it adviseable for Mr. *G.* to take the opinion of some eminent counsel, not to rely upon my opinion.

nion. In 2 *Vern.* 490, *Fetcher & a'*, against Lady *Sidley & al.* there is a material case, as I think, to prove, that the premises in question cannot be liable to the payment of Mr. *B—n*'s debts; for in the case above-cited it appears, that where the husband purchased a leasehold estate in the name of a trustee, and took a declaration in trust to himself for life, and afterwards in trust for his wife, the court would not deem this to be fraudulent as against creditors; whereas in the present instance the estate was originally the wife's estate, and even the fine paid upon the renewal of the lease appears to remain a charge upon the estate.

T. Barnardiston.

C A S E.

Abstract of the title to leasehold premises.

6th June, L E A S E from mayor, &c. of London, to *T. H.* for 61 years, from Ladyday 1694, of "ALL that their new-built messuage, situate in the south-west-end of London Bridge."

17th June, 1725. — ASSIGNMENT of the above lease, *W. S.* to *W. E.* in consideration of 150l.

3d December, 1728 — LEASE from mayor, &c. of London, to *W. E.* of same premises for 32 years, to commence at Ladyday 1755.

17th April, 1729. — MORTGAGE assignment of same premises for 61 years term, *W. E.* to *T. S. Esq.*

Ditto, — same premises, for 32 years term, ditto to ditto.

9th April, 1739. — RELEASE of equity of redemption on the two before-mentioned mortgaged terms, *W. E.* to *E. S.* executrix of her husband *T. S.*

Jur. 11th April, 1739. — AFFIDAVIT made before Master *Thurston*, by *W. E.* that at the time of the above conveyance to *Mrs. S.* premises were not incumbered, and that he believed original lease granted by the city to *T. H.* was lost or mislaid.

12th June, 1729. — BY WILL of this date, *T. S.* (intestate) gave what leasehold terms of his should be to come and unexpired at the time of the decease of his wife *E. S.* to be disposed of by her to such of his four nieces as she should please to leave the same, or their heirs.

N. B. *Mrs. E. S.* died without a will.

15th Feb. 1745. — LETTERS of administration granted out of the prerogative court of *Canterbury*, to *C. H.* widow and administratrix, of the goods and chattels of *E. S.* deceased, who was sole executrix and residuary

residuary legatee of *T. S.* deceased, of the goods, &c. unadministered by the said *E.* of the said *T.*

The four nieces and next of kin of *T. S.* are *Elizabeth* married to *C. H.* *Catharine* to *R. H.* *Thomasine* to *W. S.* *Martha* to *C. C.*

Mrs. H. was a widow at *Mrs. S.*'s decease, who is since dead, leaving two children, *viz.* *A.* and *E.* who are of full age.

Opinion on the above abstract.

The lease made in 1695, being lost, is of no consequence, as it expired in 1755. *T. S.*'s four nieces being the next of kin to him, and administration having been granted to one of them, they have an equal right to this leasehold estate; but *C. H.* being dead, her interest in one fourth of the term devolves upon her son and daughter in moieties, under the directions of her will, as part of the residue of her estate; and as they are both of age, they by joining with the husbands of the three surviving nieces in a surrender of the term, will be a sufficient title for the city; and though the term for years is a chattel real, yet the husbands may dispose thereof in their lives without their wives concurrence; but have no power to devise it.

Guildhall, Oct. 30, 1761.

Tho. Nugent.

C A S E.

On the 9th of *February* last, *A.* a trader, applied to *B.* to lend him 180*l.* and *B.* accordingly advanced and lent *A.* 49*l.* in part thereof; but soon after *B.* being uneasy at the advancing and lending the said sum without some security, he proposed to *A.* that if he would make him a bill of sale of his utensils in trade and stock, he the said *B.* would make the aforesaid sum of 49*l.* up the sum of 180*l.* on the credit thereof; and accordingly some few days afterwards, in the said month of *February*, a bill of sale was made and executed between the said parties; but the said bill of sale was not executed the day the same was dated.

The residue of the consideration was paid and made up by *B.* to *A.* by two drafts for money; but that the said drafts were not given by *B.* to *A.* at the time of his executing the said bill of sale, but the same were given to the said *A.* about two months afterwards, and possession of the said utensils in trade and stock was given to *B.* by the delivery of a horse in *London*, and *B.* never went to take the possession thereof out of the hands of the vender; but *A.* made use of the said utensils in trade and stock as before, and continued in the possession thereof under a verbal agreement between *A.* and *B.* that *A.* should pay *B.* 10*s.* 6*d.* per week for the use thereof, neither was the said bill of sale known to any of the said *A.*'s other creditors, but was, at his request, to be kept a secret.

About three or four days after the executing of the said bill of sale, *B.* proposed to *C.* servant to *A.* that *C.* should take an attigament of the bill of sale made by *A.* to *B.* because it would be better and more *advantageous*

advantageous to him as he lived upon the spot; and *B.* in consideration of 180*l.* assigned over the said bill of sale to *C.* but the consideration money was not then paid by *C.* to *B.* because it was verbally agreed between them, that *C.* should work it out for *B.*'s use in the way of his trade, and *C.* hath not yet paid any part of the said 180*l.* or done any work for *B.* on account thereof in pursuance of the said agreement, and possession of the said utensils in trade and stock was given by *B.* to *C.* by the delivery of a horse in *London*; yet notwithstanding all this, *A.* carried on the trade as usual, and all commissions or orders for work were taken in his name, till the month of *October* last, and he continued in the possession of the said utensils in trade and stock as before; and the said assignment by *B.* to *C.* was kept a secret, and was not known to any of *A.*'s creditors, because if it had been known it might have prejudiced *A.*'s credit.

Note. The attorney who was employed to draw the bill of sale from *A.* to *B.* had orders given him, at the same time he was to prepare the said bill of sale, to make and prepare an assignment of the same ready to be executed, and was requested on the behalf of *A.* to keep the same a secret, lest it might hurt *A.*'s credit, and for that purpose he engrossed such bill of sale and assignment, all with his own hand, and was a subscribing witness to both bill of sale, and assignment; but no money then passed.

On the 6th of *October* last, a commission of bankruptcy issued against *A.* whereupon he hath been declared a bankrupt, and *A.* having done several mesne acts, by which he hath assigned and transferred the property of his estate and effects to the prejudice of his creditor in trade, between *February* last, the time of his making the said bill of sale to *B.* and the said 6th *October*.

Query. Upon the circumstances of this case, whether the making and executing the bill of sale by *A.* to *B.* and *B.*'s assigning the same to *C.* as above set forth, and *A.*'s continuance in the possession of the utensils in trade and stock thereby bargained and sold, though under an agreement to pay 10*s.* 6*d.* per week for the use thereof, is not such a badge of fraud as upon due proof thereof will amount to an act of bankruptcy, and invalidate all the mesne acts done by *A.* with respect to the disposition of his estate and effects, between the date of that bill of sale, and the tell of the commission of bankruptcy issued against him, and whether the same will not be sufficient evidence on a trial at law to recover the effects of *A.* in an action of trover?

Opinion. I think the executing that bill of sale, and the other circumstances, do not amount to an act of bankruptcy, there being a real consideration for the bill of sale as a security.

30th November, 1744.

Dudley Ryder.
CASE

C A S E.

F. C. a citizen and freeman of *London*, died intestate, leaving a widow (but no children or grand-children) and three nephews and nieces who are his next of kin, between whom and the widow his personal estate is now to be divided, according to the custom of the city of *London*, and to the directions of the statute of 22 & 23 of King *Charles the Second*, *Intituled*, "An act for the better settling of intestates estates."

Note. The intestate had been a freeman many years before the making of the act of the 11th of King *George the First*, *Intituled*, "An act for the regulating elections within the city of *London*, and for preserving the peace, good order, and government of the said city."

The widow claims a moiety of the clear personal estate, as belonging to her by virtue of the custom of the city of *London*, and a moiety of the remaining moiety by virtue of that statute; and further claims an allowance for her widow's chamber, agreeable to the custom of the said city.

The whole clear personal estate amounts to 1000*l.* or upwards. The deceased being a plain working man, the household goods and furniture were very plain and ordinary, and are all valued at no more than 82*l.* 10*s.*

The whole furniture in the chamber, where they usually lay, is valued at but 18*l.* among which there is no bed linen of any kind or sort, except a linen quilt.

Query. Is the widow entitled to a moiety of the intestate's clear personal estate by virtue of the custom of the city, and to a moiety of the remaining moiety by virtue of the before-mentioned act for settling of intestates estates, or not?

Opinion. I am of opinion, that the widow is intitled to a moiety of the intestate's clear personal estate by virtue of the custom of the city, and to a moiety of the remaining moiety by virtue of the before-mentioned act for settling of intestates estates.

Query. Is the widow entitled to any, and what part or share, of any, and what sum of money out of the intestate's personal estate in lieu of her widow's chamber? if she is, out of what part of the estate is it to be deducted? or is she obliged to take the furniture of her chamber in *kind*, or the *value* *thereto* according to the appraisement in satisfaction of that claim, and in what manner is the estate to be distributed?

Opinion. I am of opinion, that the widow will not be obliged to take the very furniture found in the best chamber at her husband's death,

death, or the value thereof upon an appraisement; but will be allowed by the custom of *London* (as it is now taken to be) a competent sum in lieu of her widow's chamber according to the *quantum* of her husband's personal estate, which allowance is usually, and ought, in my opinion, in this case to be the 40th part thereof, so as such 40th part doth not exceed the sum of fifty pounds in the whole, which 40th part is to be taken out of the whole neat personal estate after the debts and funeral are paid, and before the same is distributed into parts or shares, according to the custom of the city, and the statutes made for the distribution of intestates, estates.

28th Nov. 1735.

Sim. Uirlin.

C A S E.

KNOW all men by these presents, that we *J. P.* of, &c. mariner, and *T. H.* of, &c. carpenter, are held and firmly bound to *S. G.* of, &c. Esq; in the sum of — pounds, of lawful money of *Great Britain*, to be paid to the said *S. G.* or his certain attorney, executors, administrators, or assigns, for which payment to be well and faithfully made, we bind ourselves, jointly and severally, and our joint and several heirs, executors and administrators, firmly by these presents, sealed with our seals, dated this — day of —, in the — year of the reign of our Sovereign Lord *George the Second*, by the Grace of God of *Great Britain, France, and Ireland*, King, Defender of the Faith, &c. and in the year of our Lord —.

THE condition of the above-written obligation is such, that whereas the above-named *S. G.* hath on the day of the date hereof *lent* unto the above-bouneden *J. P.* the sum of — pounds upon the merchandizes and effects laden and to be laden upon his own account, on board the good ship called —, of the burthen of — tons, or thereabouts, now in the river of *Thames*, whereof Captain — is commander; and if the said ship do, and shall, with all convenient speed, proceed and sail from and out of the said river of *Thames* on a voyage to any ports or places in the *East Indies, China, Persia*, or elsewhere, beyond the *Cape of Good Hopes*, and from thence do, and shall sail and return into the said river of *Thames*, at or before the expiration of thirty-six callendar months, to be accounted from the day of the date above-written, and that without deviation (the danger and casualties of the seas excepted); and if the above-bouneden *J. P.* and *T. H.* or either of them, their or either of their heirs, executors, or administrators, do, and shall, within thirty days next after the said ship or vessel shall be arrived in the said river of *Thames* from the said voyage, or at the end and expiration of the said thirty-six months, to be accounted as aforesaid, which of the said times shall first and next happen, well and truly pay, or cause to be paid unto the said *S. G.* his executors, administrators, or assigns, the sum of — pounds of lawful money of *Great Britain*, together with — pounds of like money by

by the month, and so proportionably, for a greater or less time than a month, for all such time, and so many months as shall be elapsed and run out of the said thirty-six months over and above twenty months, to be accounted from the day of the date above-written; or if in the said voyage, and within the said thirty-six months, to be accounted as aforesaid, an utter loss of the said ship by fire, enemies, men of war, or any other casualties, shall unavoidably happen, and the said *J. P.* and *T. H.* or either of them, their or either of their heirs, executors, or administrators, do, and shall, within six months next after such loss, pay and satisfy unto the said *S. G.* his executors, administrators, or assigns, a just and proportionable average on all the goods and effects of the said *J. P.* carried from *England* on board the said ship, and on all other goods and effects which he shall acquire during the said voyage, and which shall not be unavoidably lost, then the above-written obligation is to be void, or else to stand and remain in full force and virtue.

Sealed; &c.

J. D.

M. P.

J. P.

T. H.

The ship in question returned into the river *Thames* before the expiration of thirty-six calendar months.

Query, Is this bond usurious? and can the statute of usury be pleaded in bar?

Opinion, I think this bond is conformable to the forms which have been observed in bottomry bills, since the act relative to this subject, in the 19th of his present Majesty; and as to the interest or premium, though it is large in this bottomry bill, yet I conceive it is not such as will make the contract usurious; and that the statute of usury cannot be safely pleaded to any action brought thereon.

29th Jan. 1756.

Ja. Hewett.

C A S E.

A BOUT October 1739, one *J. T.* of the parish of *St. Bride's, London*, cheesemonger, being disordered in his senses, so far neglected his business, as to become insolvent.

The said *J. T.* was at that time possessed of a considerable personal estate, and likewise entitled to the equity of redemption of the moiety of certain copyhold premises, situate at *Chipperfield*, in the county of *Hertford*, of the yearly rent of 24*l.* which premises were devised to *Mary* the wife of the said *J. T.* and *F. I.* spinster, her sister and their heirs for ever, by *F. I.* their mother, to be equally divided, between them the said *M.* and *F.*

AFTER the death of said *F. I.* the mother, the said *J. T.* and *M.* his wife, were admitted to the moiety of said premises, under the

will of the said *F.* the mother, for their lives and the life of the survivor, afterwards to her, and her heirs and assigns for ever, and being so admitted on the 20th of August, 1739, in consideration of 80*l.* paid by said *F. I.* spinster, the said *J. T.* surrendered said moiety to the use of said *F. &c.* subject to a proviso to be void on payment of said 80*l.* and interest at the time in said surrender mentioned.

ON the said *J. T.* becoming insolvent, an assignment of his estate and effects, was made to some of his creditors, *In trust* to pay themselves and the rest of the creditors, wherein it was presumed the equity of redemption of the said copyhold premises was included.

SOME TIME after, to wit, on or about the month of March, 1740, the said *J. T.* became quite lunatick, and having no person to take care of him, the said parish of St. Bride's was obliged (as he belonged to them) to take him into their workhouse, where they maintained him for some time, but he growing worse they got him into Bedlam Hospital, where he now remains at the charge of the said parish, for which they pay the sum of 2*s. 6d.* per week, besides some other necessaries found for him.

1st October, 1741.—*F. I.* of the parish of St. Mary *Islington*, in the county of *Middlesex*, spinster, (being the same *F. I.* above mentioned) by her last will and testament in writing duly attested, and since proved, gave to divers persons therein mentioned several pecuniary and specifick legacies, and for the performance thereof, by the said will, gave, devised and bequeathed, all her estate both freehold and copyhold to *H. H.* of *Newgate-street London*, cheesemonger, to hold to him and his assigns, upon special trust, to sell and dispose of the same for the best price or prices which could be gotten, and by and out of the monies arising by sale thereof, to pay and discharge her debts, legacies and funeral expences, if her personal estate should not be sufficient; and as to the rest and residue of the monies arising by such sale, to pay, apply, and dispose thereof in such manner, and to such person or persons (except to *J. T.* her husband) as her dear sister, the wife of the said *J. T.* should by any deed or writing notwithstanding her coverture, under her hand, attested by two or more credible witnesses, direct or appoint, it being her (the testatrix's) intention and will, that the same should be for her sole and separate use, and not subject or liable to the controul or debts of her said husband; and by the said will constituted and appointed the said *H. H.* whole and sole executor thereof.

AFTER the decease of the said testatrix, the executor *H. H.* pursuant to the authority in the will, sold one moiety of the said copyhold premises, at *Chipperfield*, above mentioned, and the money arising thereby was applied in discharge of the debts and legacies, &c. of testatrix; the surplus thereof being about 110*l.* together with the rest residue, &c. of testatrix's estate, was applied to the use of the said *M.* the wife of *J. T.* according to the directions of the said will.

3d August, 1744.—The said *M. T.* wife of the said *J. T.* by her last will and testament, duly executed and attested by three witnesses, thereby reciting the above recited will of her said sister *F. I.* and that in

pur-

pursuance of the authority thereby given to her by the said will &c. as far as she lawfully might and could, did give, devise, and bequeath unto her cousin *W. M.* of *Ivy-lane, London*, baker, and *J. H.* of the parish of *St. Botolph, Aldersgate, London*, baker, their heirs and assigns for ever, all her real, personal, and copyhold estates, goods, chattels, plate, and effects whatsoever and wheresoever, (except the several specific plate, rings, and clothes, therein after by her disposed of) IN TRUST thereby and thereout in the first place to pay and discharge all her just debts and funeral charges, by sale and disposal of all or any of her personal estate, and after payment and satisfaction thereof, then to pay the rents, profits, and produce of a moiety of the said copyhold estate at *Chippingfield*, in the county of *Hertford*, unto her husband the said *J. T.* for and during the term of his natural life, and from and after his decease, the testatrix ordered and directed, that the said moiety of the said copyhold estate to be sold, and the money arising from such sale to be applied to and for the purposes in the will mentioned; and further by the said will, testatrix gave to several persons therein named, divers pecuniary and specific legacies, and appointed the said *W. M.* and *J. H.* executors thereof.

SOON after making the said will testatrix died, possessed of real and personal estate sufficient to answer the purposes in the will mentioned, and, among others, died possessed of certain goods, chattels, and effects to the amount of 34*l.* which she had taken to her own use, being the property of her husband *J. T.* but great part of which testatrix had given to divers persons in will mentioned as specific legacies.

N. B. The said *M. T.* it is presumed, never made any surrender to the use of her will.

The above named *J. T.* is now in Bedlam, at the expence of the parish of *St. Bride's*, who have expended in maintaining the said *J. T.* both before and since his being in Bedlam, the sum of 30*l.* or thereabouts, and as there is little hopes of the said *J. T.* ever being quite sane, are liable to expend other sums of money in his maintenance, and that perhaps as long as he lives, unless the parish can some way secure the interest, it is presumed the said *J. T.* hath under the above two recited wills for his maintenance, or thereby or thereout reimburse and repay themselves.

N. B. The said *J. T.* is now supposed by the physician that attends the hospital, to be in a fair way of doing well, and for that reason the committe purpose to discharge him in a week's time, if he continues as well as he is at present, but the danger will be on his going out, when perhaps by liquor or other intemperance he may possibly become as bad as ever.

Query. Hath the said *J. T.* any, and what right or interest, under the above wills to any, and what part of the estate and effects left either by his sister *F. I.* or his wife *M. T.* and in what manner would you advise, or can the parish of *St. Bride's* proceed for

for gaining such part thereof, as it is presumed the said *J. T.* is intitled unto, in order to reimburse themselves, what they have already expended on his account, and to prevent any future expence they may be liable to on the said account?

Opinion. I am of opinion that *J. T.* is intitled to the equity of redemption of that moiety of the copyhold estate, which was his wife's at the time of their intermarriage, if not assigned to his creditors, and that he likewise will be entituled to the *residuum* of his wife's separate estate, subject to her debts and such legacies as she by virtue of her power of making an appointment, has charged thereupon, for *F. I.* having by her will directed her estates to be sold, they are considered as money, and there being no devise over after the death of *M. T.* in case she died without executing her power of making an appointment, the whole vested in her; and of consequence, if *M. T.*'s will or deed of appointment, so far as it relates to her husband, is void and rendered of no effect by the express exclusion of him in *F. I.*'s will, then as to that *M. T.* is dead without executing her power, and it will belong to her husband; but on the other hand, if the appointment for the benefit of the husband be good, then he may take under that; so in either of these cases *J. T.* will be entituled to the *residuum* of his wife's separate estate.

N. B. The executors of the above *F. I.* and *M. T.* are ready and willing to act in an amicable manner with the parish of St. Bride's, and to do all things in such a manner as to give the least trouble, provided that they are properly indemnified for so doing.

Query. Therefore please to advise how, and in what manner the above persons executors, or such of them as are necessary, should or can safely act in the above affair, and what is requisite and necessary for them to do in relation to the said parish, and the said *J. T.* and if said *T.*'s wife *M.* deceased, by virtue of the said sister *F. I.* spinster's will, had power to make such will and devises in such manner, as she has thereby taken upon herself to devise the same?

Opinion. I think the regular way would be to take out a commission of lunacy against *J. T.* but as the case will not bear the expence of that, I think it will be advisable that the overseers of the poor, and the churchwardens of the parish of St. Bride's, give a bond, in which they must oblige themselves and their successors, to save harmless and indemnify the executors of *F. I.* and *M. T.* against any payments or acts which they or any of them shall from time to time make or do to them or any of their successors, on the behalf or upon the account of *J. T.*

12th October, 1744.

Fletcher Norton.

C A S E.

C A S E.

G. M. died intestate about twenty years ago, seized of a freehold estate in fee-simple in his own right, leaving behind him two daughters by two different wives; the elder daughter *Dorothy*, her uncle *W. M.* only brother to the said *G. M.* deceased, took under his tuition, and the younger daughter *Rachel*, her mother *C. M.* widow, took care of; and soon after a difference arose betwixt *W. M.* and *C. M.* the guardians of the said children, about the division of the real and personal estate of the said *G. M.* between the said children, and submitting themselves to a reference under the penalty of 40*l.* each, to two persons, as in submission bound therein named doth appear, to make a final end of all differences betwixt the said *W. M.* and *C. M.* and accordingly they did so, by award in writing under their hands and seal, dated 10th of *April*, 1716; in the said award the lands being equally divided betwixt the said daughters, till they or one of them should arrive at the age of twenty-one years. The elder daughter *Dorothy* died two or three years since, and the younger daughter *Rachel*, being come to the age of twenty-one years, three or four months since, or thereabouts, *W. M.* having enjoyed the said lands, as set forth to her the said *Dorothy* by the *referees*, both as long as she lived and ever since, as long as she lived, for her maintenance, and since supposing himself to be next heir, the other moiety of the said lands ever since the division being enjoyed by the younger daughter *Rachel*, and her mother as her guardian.

Query. Whether *W. M.* the only brother to the said *G. M.* deceased, and uncle to the said *Dorothy*, shall be heir at law to the said *Dorothy*, as to her moiety as above set forth in the case, or *Rachel*, the half sister to the said *Dorothy*, both by one father, but not both by the same mother, or how, or in what manner will the moiety go according to law?

Opinion. It is an established rule in law, that an heir must be of the whole blood of the person who was last seized of the whole estate, and therefore I conceive that the uncle in this case, and not the half sister, is entitled to *Dorothy's* moiety of the estate, as heir at law to her; as to what is stated relating to the reference, I am of opinion that it will have no influence upon the present case.

Middle-Temple.

T. Barnardiston.

C A S E.

A. a merchant of *London*, being a great sufferer by the earthquake at *Lisbon*, called his creditors together, and represented to them the state of his affairs, and at the same time made a proposal to them to compound his debts, and to pay them four shillings in the pound for their respective debts; which offer of compromise they rejected, and insisted on his laying before them a particular state of his debts and credits.

A. has standing in his own name several shares in the Sunfire Office.

The creditors have been at the office, and given notice to the proper officer not to transfer the shares to any person whatsoever.

A. is desirous to transfer the Sunfire Office shares to one of his creditors, in satisfaction of part of a debt which he justly owes him.

Query. Is *A.*'s proposal made to his creditors, in manner stated, an act of bankruptcy, and can his creditors take out a commission on such proposal of a composition (no other act of bankruptcy having been committed by *A.*)?

If the above step taken by *A.* is not an act of bankruptcy, may he not transfer his shares to one of his creditors in satisfaction of a just debt? and will the proper officer of the Sunfire Office be justified (notwithstanding the notice given as above) in making such transfer?

Opinion. I am of opinion, that the proposal made by *A.* to compound his debts is not any act of bankruptcy, nor can the creditors support a commission on that account; and as *A.* has not committed any act of bankruptcy, he has a right to transfer his shares to whom he pleases. He may certainly transfer them to a creditor in satisfaction of an honest debt; for I know no law that prevents a trader (not a bankrupt) preferring one creditor to another; but transferring them to a stranger, not a creditor, would be a fraud, and an act of bankruptcy, as confessing a judgment where there is no debt.

5th May 1755.

Edw. Green.

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BY stat 29 Geo. 2 intituled, *An act to improve, widen, and enlarge the passage over and through London Bridge, among other things,* the mayor, aldermen, and commons of the city of London, in common council assembled, are empowered to contract and agree for the purchasing of all houses, tenements, edifices, erections, and buildings thereto, which the said mayor, aldermen, and commons in common council assembled, shall judge necessary to be taken down and removed, for the enlargement and improvement of the passage over, and of the avenues leading to and from the said bridge.

Sect. 8. And whereas it may happen that some persons, or bodies politic, corporate, or collegiate, feoffees in trust, feme coverts, or others, who are seized of some houses, edifices, or grounds, which may be necessary to be pulled down or purchased, and set out or assigned for widening and enlarging the passage over the said bridge, or of the avenues leading thereto, may be willing to treat and agree to sell such houses, edifices, and grounds, to perfect so useful and necessary a work, but are incapable of selling, granting, or conveying the same; it is therefore enacted, That it shall and may be lawful, to and for all bodies politic, corporate, or collegiate, corporations aggregate or sole, and all feoffees in trust, executors, administrators, guardians, or other trustees whomsoever, and for all feme coverts, and every other person or persons whomsoever, who are or shall be seized, possessed of, or interested in any such houses, edifices, tenements, or ground, to sell and convey all or any such houses, edifices, tenements and ground, or any part thereof, and all their estates, rights, titles, and interest whatsoever, of, in, and to the same, to the said mayor, commonalty, and citizens and their successor, or to such persons, and their heirs, for ever, as the said mayor, aldermen, and commons, in common council assembled, shall direct, in trust for the said mayor, commonalty, citizens, and their successors, for the purposes in this act contained; and that all contracts, agreements, sales, conveyances, which shall be so made by virtue and in pursuance of this act as aforesaid, shall, without any fine or fines, recovery or recoveries, or other conveyance or assurance in the law whatsoever, be good, valid, and effectual, to all intents and purposes, any law, statute, usage, or any other matter or thing whatsoever to the contrary thereof in any wise notwithstanding; and that all such persons are and shall be hereby indemnified for what they shall do by virtue of, or in pursuance of this act.

Sect. 9. It is further enacted, that where any persons shall refuse to treat and agree, or are prevented from treating and agreeing, or shall decline or refuse to sell, convey and dispose of the premises, whereof, wherein, and whereunto, they respectively shall be so seized, possessed, interested, or intitled as aforesaid, or shall not make out a clear title to the premises, the court of mayor and aldermen are hereby empowered and authorized to issue a precept for the summoning

and returning a jury of substantial disinterested persons qualified to serve on juries, and are hereby authorized, by precept or order from time to time as occasion may require, to call before them all and every person and persons whomsoever, who shall be thought necessary to be examined as witness before them, and examine them on oath touching the premises, and may, if they think fit, direct the jury to view the places or matters in question, who, upon their oaths, shall assess the value of such houses, ground, tenements, edifices, erections, and buildings, which shall be necessary to be purchased, and of the respective estate and interest of every person seized or possessed of, or interested therein, or in any part thereof, and the court of mayor and aldermen may give final judgment thereon, fourteen days notice of such assessment having been previously given to the parties interested.

Sect. 10. It is also enacted, That upon payment of the purchase-money so assessed and decreed, the person or persons entitle to such houses, tenements, &c, shall make and execute good, valid, and legal conveyances and assurances, in the law of such estate or interest for which such sums of money shall be awarded, to the said mayor, commonalty and citizens of *London*, or to any person or persons to whom the said mayor, aldermen, and commons, in common council assembled, shall direct and appoint, and their heirs, in trust for the use of the city, &c.

Query. What mode of conveyance will it be proper for the city of *London* to take in the purchase of estates under the above abstracted act?

Opinion. As this act of parliament has directed a general method of conveyance to pass any kind of interest, and estate, which is described by the words *sell and convey*, I think the city had better follow that method, and take in all these estates by a like instrument, reciting that clause in the act of parliament; such a deed will operate like an assignment of a bankrupt's estate under the bankrupt's act; this will be better than to enter into a common law method of conveyancing: for if the leases are only cancelled, and nothing conveyed, they may still remain liable to dormant or equitable incumbrances, and the city will have no deed to evidence the conveyance; I should likewise think it would be better to take all these conveyances to the corporate body, where the fee will remain for ever undisturbed, and not leave the legal estate in trustees, who in a course of time will be forgot, and the heir of the survivor unknown and lost.

C. Yorke.

Opinion. If the city was to take a surrender from each of their immediate lessees, and separate assignments of the under-leases (for they cannot take surrenders of these last by reason of the intermediate interest) that method must necessarily be attended with very great expence; to avoid which I think the city may safely pay the purchase-money of such lessees, upou their delivering up their

their leases cancelled, with a receipt indorsed upon the back, expressing the consideration money was paid on that account; for the cancelling of the deed will destroy and avoid the lease itself, because it destroys all evidence by law for the support of it, neither can there be any pretence in this case for a court of equity ever to set up these leases again, or to compel the city to execute new ones for the residue of the terms.

Where it is necessary for the city to purchase the inheritance, the conveyance may be by lease and release to the corporation, that being a safe and the common method, without appointing trustees, which in this case would be attended with unnecessary trouble and expence; and if there are many outstanding terms, I think the method above prescribed may be pursued to prevent expence also; but if there are only a few such, the more regular way will be to have them assigned to Mr. Town Clerk, or some other person in trust for the corporation.

Tho. Nugent.

Query. Are the committee under this act authorised to make any, and what allowance in consideration of the detriment the occupiers of such houses, &c. may sustain from their removal?

Opinion. I am of opinion the committee cannot do this by the act of parliament, nor ought the jury to take these expences into their consideration when they give their verdict; for nothing is before them but the value of the estate and the parties interest therein; the inconvenience and the expence of changing are circumstances that will incline a jury, and may honestly prevail with the committee to give the owner the best and highest price for his house; but if they go beyond that, the additional sum is a gratuity, whereas they are only to buy, and not to give.

C. Yorke.

Opinion. As that breach of the statute fol. 15, which impowers persons to sell to the city, mentions houses, edifices, tenements and grounds, and all their estates, rights, titles, and interests therein, and after fol. 19, in case they cannot agree, the jury is to enquire of the value of such houses, ground, tenements, edifices, erections, and buildings, and of the respective estate and interest of every person seized, or possessed of, or interested therein, which words confine and restrain the power of the committee to the particular instances therein mentioned; and as they cannot enlarge or put an equitable construction upon those words, I think they are not enabled to relieve the occupiers in any of the instances mentioned in the above question.

Tho. Nugent.

Query. By whom are jury, impannelled for the purposes of this act, to be paid?

† D 2

Opinion.

Opinion. I think, as the parliament has not directed who shall pay the jury, the city should be at that expence in all cases; for the whole proceeding is compulsory against the owners, and the public enjoys the benefit, and it would be hard to make a man pay a jury for valuing his estate against his will, when if he was left to himself, perhaps, he would not sell it any rate.

C. Torke.

Opinion. No judgment can be formed upon this point, by considering the manner of paying juries either at common law, or under the statute of the 24th of the present King, and as it may be an hardship on the city to pay juries, in cases where they find by their verdict the committee have offered a reasonable price, and an unreasonable one has been insisted upon, so it might be equally hard that persons obliged to sell should pay them upon a mistaken calculation of the real value of their interests, and the act being totally silent in that matter, and the power of summoning juries given only to the city, for whose benefit the act was made, I think they are to be paid by the city.

Tho. Nugent.

C A S E.

20th May, J. K. by will desires, that all just debts as shall be by 1736. J. K. him owing, at the time of his decease, be fully paid and satisfied.

And in the said will it is recited, that he purchased of R. B. deceased, and his son J. K. deceased, and his wife, the reversion and inheritance of two freehold messuages, or tenement, therein particularly mentioned, after the decease of Catharine, late wife of R. B. deceased, he thereby gave and devised the said two messuages (after the decease of the said Catharine) to his wife Mary for life; and after her decease, he gave one of the said messuages to his son Thomas, and his heirs and assigns for ever, he paying to sister Susanna 50l. with the payment of which he charged the messuage accordingly.

And also after his said wife's decease, he gave the said other messuage to his said son Thomas, his heirs and assigns for ever, he paying to his sister Susanna 50l. more.

And gave the residue of his personal estate and effects to his said wife, and appointed her and his said son Thomas joint executors.

28th March, 1737, by indenture the said J. K. in consideration of 300l. mortgaged the reversion of the said two freehold messuages for a term of 1000 years.

In April 1739, the said J. K. died, and on the 17th May, 1739, the said Mary K. and Thomas K. proyed the said will.

J. K. the testator, died seised of a freehold house in Catharine-street, and a copyhold estate at Enfield, and also possessed of three leasehold houses in Threadneedle-street.

The

The house in *Catharine-street*, and copyhold estate at *Enfield*, were soon after the decease of the said *J. K.* the testator, conveyed and surrendered to some creditors, who agreed [to accept of them in satisfaction of their demands on testator's estate, and the rents and profits of said three leasehold houses, and also of two freehold houses, have (ever since the death of the said *Catharine B.*) been applied, after payment of taxes, repairs, and ground-rent) in the payment of the interest of the laid 300*l.* and in discharge of the debts due and owing from the estate of the said *J. K.* the testator, as far as they have extended, so that the said two legacies of 50*l.* so given to *Susanna K.* and charged on the said two freehold houses, have not been paid, and there remains due on the said testator's bond the sum of 50*l.* and a considerable arrear of interest, besides several other debts to simple contract creditors to a considerable amount.

4th December, 1776, Mrs. *Mary K.* the testator's widow, died.

The testator of *J. K.* had five children, *John*, *Rebecca*, *Susanna*, *George*, and *Thomas*.

John, the eldest son, married, and died in the life-time of his father, and mother, leaving issue one son, named *John*, who likewise married, and is since dead intestate, leaving issue a daughter, named *Mary*, an infant.

Rebecca is still living, but has no children.

Susanna died unmarried, and intestate, the 22d November, 1746.

George died in the life-time of his father unmarried.

Thomas died in June, 1746, unmarried and intestate.

Query 1st. Will the inheritance in fee-simple of the said two houses descend unto and upon *Rebecca* the daughter of *J. K.* the testator, or to *Mary* his great grand-daughter, subject to the mortgage for 1000 years, for payment of 300*l.* and interest, and also subject to the payment of the said two legacies of 50*l.* each, devised to *Susanna* the testator's daughter?

Query 2d. *Susanna* being dead intestate, to whom do these legacies of 50*l.* belong?

Query 3d. Is the testator's bond-debt of 50*l.* a charge upon the said two freehold houses, or must his personal assets and effects be first applied towards the payment thereof?

Opinion. I am of opinion, *That the fee-simple of the two houses descends to Mary the great grand-daughter as heir, subject to the incumbrances.*

The two sums of 50*l.* belong to *Susanna's* administrator, who ever shall be so, as her assets liable to her debts with the rest of her personal estate, the residue of which belongs to the representatives of her mother, and the representatives of *Thomas* and *Rebecca* in equal thirds.

The

The testator's personal estate must be first applied in discharge of the bond, before it will be payable out of the real estate.

23th May, 1748. *Is to be sold by auctioneer to William Ryder. Dudley Ryder.*

C A S E.

9th October, 1738. **B**Y will of this date *J. S.* devised (int. al.) unto his sister *Mary*, then wife of *T. W.* all that messuage or tenement, together with a coach-house and stable in the said will mentioned to be situate in *Perkins's-rents Westminster*, in the occupation of *T. C.* for her own separate use, during her natural life, and after her decease, to the testator's sister *Elizabeth S.* and after her decease to be equally shared amongst the children of the said *Mary W.* (which children were)

Mary, now wife of *S. B.*

Hannah, now wife of *G. G.*

And

Sarah W.

And said testator further devised by his said will unto his sister *Elizabeth S.* one house and back tenement, situate in *Pye-Street, Westminster*, and also one other house or tenement, situate in *Pye-Street* aforesaid, and also one other house or tenement (mentioned to be the house wherein testator dwelt) during the natural life of her the said *Elizabeth S.* and after her decease to the said three children of *Mary W.* viz. the said *Mary*, *Hannah*, and *Sarah*, and their heirs.

The said testator died in 1742, without altering his said will, and the said *Mary W.* and *Elizabeth S.* took possession of the before-mentioned premises, according to their respective interests therein, under the said will.

The said *Mary*, and the said *Hannah* and *Sarah* (with their respective husbands) in the life-time of the said *Mary W.* and *Elizabeth S.* conveyed the same as follows:

24th and 25th November, 1743. By indenture of lease and release, of this date, between *S. B.* and *Mary* his wife, *G. G.* and *Hannah* his wife, and *S. W.* of the one part, and *F. S.* of the other part;

Reciting the before-mentioned will, and also reciting the several devises to them of the said premises, whereby they were seized as joint-tenants in fee-simple, and that they had agreed to make a partition of the same, and to grant and limit the same in the manner and to the several and respective uses after-mentioned.

It is witnessed, That for the considerations aforesaid, and in consideration of five shillings a-piece to the said *S. B.* and *Mary* his wife, *G. G.* and *Hannah* his wife, and *Sarah W.* paid by the said *F. S.* they did grant to said *F. S.* and his heirs and assigns, &c. the premises mentioned in *J. S.*'s will.

To hold the same to the said *F. S.* his heirs and assigns for ever.

To the several uses, intents, and purposes hereby after-mentioned and declared, of and concerning the same, that is to say, as for and concerning.

All

All that messuage or tenement, with wash-house, and stable, or carpenters work-shop, then occupied by the said G. G. in *Perkin's Rent*, and all that other messuage or tenement beforementioned to be in the tenure or occupation of _____ in *Pye-street, Westminster, in Com. Middlesex*,

To the use and behoof of the said G. G. his heirs and assigns for ever, and for no other use, intent, or purpose whatsoever.

Nota. The other houses devised by J. S.'s will are by this deed settled to the use of S. B. and *Mary* his wife, and the said *Sarah W.* with the usual covenants, and the said G. G. covenants with the said S. B. and S. W. as follows:

That he the said G. G. will, within one month after the death of the said *Mary W.* and *Elizabeth S.* pay to the said S. B. the sum of 1*l.* and to said *Sarah W.* 2*l.* the said B. covenants with the said G. G. that in case the said *Mary W.* should happen to survive the said *Elizabeth S.* that he will, during the natural life of the said *Mary W.* pay him 2*l. 8*s.** yearly, by quarterly payments; the same covenant to G. G. by *Sarah W.* for payment of 1*l. 8*s.** executed by all the parties thereto, and the consent of *Mary W.* and *Elizabeth S.* to the making this deed indorsed.

Note. A fine was levied according to the uses in the before-abstracted deed.

The said *Hannah*, wife of G. G. died in the life-time of the said *Elizabeth S.* and before she became possessed of the said premises so devised to her by the will of J. S. and left issue at her death, *viz.* *Mary* and *Elizabeth*. The said *Mary* died about twelve years ago, and the said *Hannah* has since intermarried with one *W. N.*

The said G. G. keeps possession of the above-mentioned premises, devised to his wife as aforesaid, under a pretence that she had an absolute right to convey or sell the same, though not possessed thereof at the time of her death, and that by the above abstracted deed of partition, the said premises are now absolutely vested in him, and that he has a right to sell and dispose of the same as he pleases; and at other times he pretends that he has a life estate therein by the *courtesy of England*, as having issue born alive of his said wife.

Query. Had the said *Hannah G.* his wife any right to settle the same on him, as she was not possessed of or entitled to the said premises at the time she made such deed, nor at the time of her death; or do the same devolve to *Hannah* her daughter, now *Hannah N.* or hath the said G. G. a right to the same for his life by the *courtesy of England*, as having a child born alive by her at her death, though she was not possessed of or entitled to the same at the time she died?

Opinion.

Opinion. If the facts set forth in the recitals of the deed of partition are true, it plainly appears that *G. G.* hath an absolute title to the freehold and inheritance in fee simple of the premises limited to him by the use of the fine, and may sell or dispose thereof as he pleases, and his daughter *Elizabeth N.* hath not the least pretence or shadow of title thereto.

12th September, 1763. *W. Rivet.*

C A S E.

13th September, 1760. **B** Y indenture of this date *T. C.* demised to *W. W.* all that messuage or tenement situate, &c. to hold to the said *W. W.* his executors, &c. for the term of eleven years, at the yearly rent of 30*l.* payable quarterly.

13th October, 1771. A commission of bankruptcy was awarded against the said *W. W.* the lessee under the said recited lease, and the commissioners acting under the said commission assigned over his effects to *T. S.* and *J. B.* who were chosen assignees under the same.

The said *T. S.* and *J. B.* the assignees, among the other effects of the said bankrupt, put up the above recited indenture of lease to sale by public auction; but it appearing not to be a beneficial lease, they could not dispose of it, and therefore are desirous of delivering possession, and surrendering the lease to the lessor.

The lessor now insists that the assignees, by putting the said lease up to public sale, have made the same their own, and are therefore obliged to pay the rent for the residue of the said term.

Query. Are the assignees, by this step taken by them, liable to pay the rent to the lessor during the residue of the term of the said lease, or may they notwithstanding deliver up the lease to the lessor, and thereby discharge themselves therefrom?

Opinion. If the assignees have never *entered on or occupied* the premises, I think they are not liable to the payment of any part of the rent, notwithstanding the attempt they have made to sell the same; for till they endeavoured to sell it, they might not have an opportunity of knowing what it was really worth; even though they should have occupied the house for any time, yet I think they would not be liable to pay more rent than the premises are really worth; as is the case of an executor, who may by plea shew, that the premises are not worth so much as the rent reserved, and if he has not assets, by that means discharge himself from the payment of more; therefore I am of opinion the assignees may now deliver up the lease to the landlord, and discharge themselves of it.

Middle-Temple, 21st June, 1771.

F. Buller.

C A S E.

A. Giving a promissory note to *B.* for payment of 100*l.* to him or his order, three months after date, *B.* applied to *C.* to get it discounted, and *C.* applied to *D.* for that purpose, who agreed to do it at 20*per cent.* provided *C.* and *E.* who were friends of *B.* would indorse it as his further security. They accordingly did so, and *D.* advanced the money, and received the discount.

When the three months were elapsed, *B.* applied to *D.* to forbear calling in the 100*l.* and made him a present of several guineas for continuing it several months after such further present made, and after the note had been due, *D.* applied to *A.* to let him know the note was not taken up, whereupon *A.* replied, he was surprized at it, but as he had none of the money, he would never pay it, and therefore told *D.* he must look to *B.* as his paymaster, and advised him to do it forthwith.

B. after this requested *D.* to allow him further time for payment of the note, and in consideration thereof *B.* agreed to allow *D.* one guinea *per month*, and has actually paid one guinea *per month* for near three years; but nevertheless *D.* several times after such new agreement acquainted the said *A.* *C.* and *E.* that the note was not taken up, and they always desired he would oblige *B.* to do it.

About six months since *D.* paid away the note to *J.* husband to *D.*'s daughter, as part of her fortune, but he afterwards paid it to *D.* his father.

Since which *G.* who acts as attorney for *D.* pretends he has bought the note of *D.* and has brought an attachment of privilege against *A.* the drawer, and all the indorsees, except *D.* himself, and has actually arrested *A.* thereon.

Query. Therefore as *D.* took *B.* for his paymaster, by continuing to indulge him for three years and a half, after the note become due, at his instance and request, (tho' often pressed by the other party to sue him) in consideration of one guinea *per month* premium, Can he recover against *A.* the drawer, or the other indorsers at law? and if so, will not equity relieve him?

Opinion. I am of opinion, That as *A.* was the original debtor by his promissory note, and the money is not paid, he is still liable to pay it, notwithstanding *D.*'s continuing the money at *B.*'s request, and for a premium given by *B.* I think, he cannot defend himself against the payment of it, either in law or equity, though *D.*'s agreement for the continuance of so extravagant a premium, and accepting it accordingly, does, I think, subject him to the penalty for usury, by the statute of 12 *Ann.* c. 16. being treble the value; But if *A.* really never had the 100*l.* it is probable that he may be relieved on payment of 100*l.* and interest, only deducting the premiums by a bill in equity, with proper suggestions contrived to it, for a discovery of these premiums and

Opinion. If the facts set forth in the recitals of the deed of partition are true, it plainly appears that *G. G.* hath an absolute title to the freehold and inheritance in fee-simple of the premises limited to him by the use of the fine, and may sell or dispose thereof as he pleases, and his daughter *Elizabeth N.* hath not the least pretence or shadow of title thereto.

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discounts, but so as to avoid the plea of it subjecting *D.* to a penalty; but this is upon supposition that *G.* has not paid a valuable consideration for it, and is only a trustee for *D.*

Query. Will *B.*'s and the other indorsors, being included in the attachment, prevent their giving evidence for *D.* in the cause against him, especially as *B.* by being so, does not benefit himself, but, on the contrary, takes the debt upon himself?

Opinion. I think this will not take off the indorser's evidence, unless they should be joined in the declaration, which I don't see how can be.

Query. As the note is not indorsed by *F.* son-in-law to *D.* nor the note given to *G.* for fees, is not the attachment an improper writ, and can we not plead the want of such indorsement, or the defectiveness of the writ in abatement to the action?

Opinion. If *G.* has not a legal title to the note by an indorsement, he cannot sue at all, and then he will be nonsuited upon the trial; but if it should appear to be indorsed at the trial, that will be sufficient; but this is a defence to the merits, but not a proper plea for the writ.

October 16, 1733.

D. Ryder.

C A S E.

IN 1731, *W. P.* being to be sworn in one of the officers for the county of *Middlesex*, *W. S.* and three other persons gave a bond to *S. R.* and *F. P.* then sheriffs of *Middlesex*, dated 28th September, 1731, in the penalty of 2000*l.* for performance of the covenants in certain indentures referred to by the condition of the said bond; and *F. S.* was appointed by the said *R.* and *P.* their under sheriff for the said year.

On the 5th of *May*, 1732, a warrant was made out by the sheriffs of *Middlesex* for arresting one *B.* at the suit of *Mr. M.* and was directed to *S. T.* and the said *W. P.* but was not delivered to *T.* and *T.* arrested the defendant; but *P.* being at the door when *T.* arrested him, *T.* prevailed on *P.* to take the prisoner to his house, till he could send for bail, and *P.* did so.

On *Sunday* evening the 9th of *May*, 1732, the prisoner forced open *P.*'s cellar window, and made his escape against *P.*'s consent and knowledge: upon this *P.* got the Lord Chief Justice's warrant to retake him, and was at great expence for that purpose; but not being able to retake him, and the sheriff being served with a rule, to bring in the body, *W. P.* in 1732, paid to one *Mr. P.* 200*l.* and he paid it over to the plaintiff's attorney, and thereupon plaintiff's attorney was satisfied, and staid all proceedings against the sheriff.

Soon

Soon after the payment of the 200*l.* the plaintiff died, after which Mr. *P.* died, and on or about June last, the defendant was taken on the escape warrant, and sent to Newgate, where he lately died.

That no proceedings have been had in the above affair since the payment of the 200*l.* to plaintiff's attorney, now near five years ago, till Michaelmas last past, one *J. H.* a pretended attorney, but not admitted, filed a bill in the Court of Common Pleas against *S.* in the name of the said *R.* and *P.* sheriffs, for 2000*l.* the penalty of the bond, pretending Mr. *P.* paid 100*l.* part of the said 200*l.* to the then plaintiff's attorney out of his own pocket, to make an end of the affair, and *H.* insists, though *S.* was named and acted as under sheriff in every respect, yet he accounted with *P.* for the profits, and that *P.*'s executrix is entitled to have the benefit of the said bond; whereas it is apprehended the plaintiff was really dead before any money was paid, and that thereby the cause was abated; but if that should not happen to be the case, as the bond was given only to the high sheriff for performance of articles in a certain indenture mentioned in the condition of the said bond, which indenture was only to indemnify the high sheriff from any escapes or damages, and as the plaintiff, as also Mr. *P.* and the defendant *B.* are all since dead, and Mr. *S.* not *P.* was the person who acted as under sheriff, and consequently neither the high sheriff nor under sheriff suffers, the widow and administratrix of *P.* has no right to sue Mr. *S.* on the said bond, especially as by an affidavit annexed it appears this action has been brought without the consent or direction of the said *R.* and *P.* or *S.*

Opinion. The defendant is liable to forfeit the penalty of this bond on suffering *B.* to escape, and has no method at law to help himself, even although satisfaction hath been made to plaintiff's attorney, but his relief must be in equity.

R. Draper.

C A S E.

E. widow and relict of *T. C.* and *E. C.* infant *per prochein amy*, *W. B. R. L.* and *E. ux' R. L. jun.* *J. S.* and *M. L.* infants, *per prochein amy*, *P. R.* and *S. ux. W. P. F. J.* and *M. R.* infant, plaintiffs, and *A. C.* widow, and executrix of *W. C. J. C. W. C.* infant, *per guardian*, defendants.

The bill sets forth, That testator *W. C.* late father of said *T. C.* and of plaintiffs of *E. L.* and *S. R.* and of defendant *J. C.* duly made his will, and afterwards a codicil, and having given several pecuniary legacies to his children, he devised to defendant *A. C.* all his copyhold, freehold, and leasehold estates for life, and gave to her as long as she should live, the use of all his other personal estate, chargeable with the payment of said legacies; and after her decease devised all his freehold, copyhold, and leasehold estates, to and amongst his several children, and the residue of his personal estate, after his wife's death, he

gave to his four children to be equally divided between them, and that each of them should pay each of such shares to and amongst their respective children born or to be born, equally to be divided between them as they should respectively attain 21 years, or be married, and until such time the same was to be put out at interest, and the same and the whole interest paid amongst them, and no part applied to their maintenance and education, that being a duty incumbent on their parents, and thereby made said *A.* his wife executrix and died.

Therefore that defendant *A. C.* may set forth an account of the personal estate, and that the money may be put out and secured, so as said infants and others concerned therein may have their properties secured, and that she may say what goods she claims for her use during her life, and may deposit the title deeds as the court shall direct, and to examine the witnesses to the will and codicil, to perpetuate and establish the same. *Is the Bill.*

The defendant *A.* the executrix, by her answer sets out an account of the personal estate, but insists, by the will there is a legacy of 300*l.* given to each of her four children, on condition that they should execute a deed, waiving all right to the personal estate, under the custom of *London*, and that she paid them the said legacies, yet they had not executed such deed.

This cause was heard by consent before his honour on the 18th *March*, 1731, when it was referred to Mr. *Holford*, to take an account of the personal estate come to the hands of defendant *A.* the executrix, in which account she was to be allowed the *paraphernalia*, reasonable funeral charges, and other just allowances, and was to declare by schedule what part of the goods and plate she intended to retain, and was to have the use thereof accordingly for life, and the residue of the goods were to be sold, and the money arising thereby, and what should remain as the balance of the said account, was to be put out on government securities, with the approbation of the said master in the name of said executrix, who was to declare the trust thereof for the uses in the will, and the master was to look into the securities, and if he found them good, the money was to remain thereon, or if improper, the money was to be called in and placed out again as aforesaid, and the original deeds and writings were to be brought into court for the benefit of the parties interested therein; and such of the legatees who had received their legacies, were to execute releases to said executrix, pursuant to the directions of the will, and the parties were at liberty to apply for further directions, and to have the costs out of the estate to be taxed by the master.

That since the decree defendant *A. C.* is dead, having made her will, and plaintiffs *R. L.* and *P. R.* senior executors, who have since proved the same.

That some of the directions in the decree now seem to be at an end, viz. as to the defendant's choosing what goods she would have for her own use for life, (all being now to be sold, and the money

placed out as aforesaid) and likewise as to bringing the deeds and writings into court, the several contingent estates now falling into possession of the several parties who are all of age, they ought to have their respective deeds delivered to them, and Mr. L. and R. are ready and willing to go on with the account, and put out the money as directed by the decree.

Query, 1st. Therefore, whether it will be sufficient only to revive the suit? or whether a supplemental bill or bill of revivor must be preferred, and in either case who must be plaintiffs, and who defendants, and in what manner is it proper to be done?

Note. That the said T. C. and plaintiffs E. L. and S. R. have all several children now living, but defendant I. C. who tho' married has no child, pretends he ought now to have a fourth of testator W. G's. personal estate except the leasehold, or at least the interest thereof paid to him, and although he has by the will a good estate in land, and that the personal estate is divided as near as may be amongst the four children, for the benefit of their respective children, yet he at other times pretends that he will set aside the will so far as it is contrary to the custom of London, hoping thereby (as he has no children) to have his customary part to his own use, but as he has received his conditional legacy from the executrix, and is ordered by the decree to execute a deed, waiving all right to the personal estate by the custom of London.

Query 2d. Whether this will not be a bar to him, or whether he can claim, or have his customary, or any other part, than what is left him by the will?

Query 3d. And possibly as it cannot be known whether J. C. will have children or not till after his death?

As the case now stands, whether one fourth of the personal estate after his death, will go to his executors, or be deemed a void legacy, and go among the other three children and their representatives? or must it in any and what manner go amongst the children of the said T. E. and S. or whether J. C. in his lifetime can have this fourth part or the interest of it?

Opinion 1st. Two of the plaintiffs being the executors of A. C. the bill to be brought must be partly a bill of revivor, and partly supplemental, stating that special, and the bill should be brought in the names of the other plaintiffs against the two executors, and their wives, and the defendants to the original bill, to revive the former suit and decree, and to carry it into execution.

2d. I am of opinion, that he is barred from claiming his customary part of the estate, or any other part inconsistent with the will, by his receipt of his conditional legacy, and by the decree.

3d. This

3d. This point is not clear, but from the will that the testator intended that his four children should be only trustees for their respective children, of the shares of the residue of his personal estate given to them respectively; and if that be the meaning of the will, if *J.* should die without having any child, the trust as to this fourth part will become lapsed, and I incline to think, it ought in that case to be divided in the same manner as it would have been if the first testator had died intestate as to this part, in the mean time *J.* hath a right to receive this fourth, subject to the trusts in the will.

June 1, 1732.

C. Talbot.

C A S E.

15th Nov. *J.* C. by his will, after giving several pecuniary legacies, devises and bequeaths all the residue and remainder of his goods, chattels, real and personal estate or estates whatsoever, and wheresoever, unto his two sisters *M. M.* and *E. S.* to be equally divided between them, share and share alike, and to their heirs and assigns, after payment of his debts, legacies, and funeral expences, and made his said two sisters executors of his said will, and they have proved the same.

Mrs. *M.* had at the time of making the will, and now has, a husband and several children, and she is dubious whether she can dispose of her share of the said real or personal estate; and if she can, is willing to secure it to the children: Therefore,

Query. If she can dispose of her part and share, how and in what manner will be most proper? Whether by deed in her lifetime, or by her last will and testament? If by deed, by what sort of conveyance?

Opinion. As to the personal estate, I conceive that Mrs. *M.*'s share of it vests immediately in the husband, and she cannot dispose of it. As to her share of the real estate, her husband will be entitled to it for life by the courtesy, in case he survives her, and Mrs. *M.* cannot dispose of, or make any settlement of it without the consent of her husband, and that must be done by deed and fine.

Query. If Mrs. *M.* should die intestate, or before the estate is divided, will not her husband be entitled to her said share of the real and personal estate, or who otherwise?

Opinion. Mrs. *M.* being a *feme covert*, cannot make a will; and in case of the death, her personal estate is absolutely her husband's, and he will be entitled to the real estate by the courtesy, as above, for life, and the reversion will descend to her heir at law.

4th May, 1738.

Edw. Green.

C A S E.

C A S E.

W. B. by his will, dated 18th *August 1731*, says, *Imprimis*, I give and bequeath all my messuages or tenements in *Holborn*, and my messuage in *Addlehill*, to be sold by my executors hereafter named, and the money arising thereupon, after sale thereof, to be paid and distributed to such person and persons that are in a certain schedule or paper hereunto annexed mentioned, revoking all other wills by me formerly made, do declare this to be my last will and testament, contained in this one sheet of paper, and do nominate and appoint Mr. *M. I.* sole executor thereof. In witness &c.

Note; The will has three witness' names to it, and appears to be signed and sealed by the testator, but is of the hand-writing of the executor.

About eight or ten days after executing the above will, the testator made a paper to the effect following, and sealed it; but no witness' are to that, and dates it of even date with his will.

A schedule that I make as part of my will for the dispositions of the several sums to the persons hereunder mentioned upon my estate, mentioned in my said will. *Imprimis*, I give to *M. B.* my servant, 20*l.* a year, payable quarterly, out of the rents aforesaid during her natural life. *Item*, I give to *M. R.* 5*l.* *Item*, I give to *S. B.* upon marriage, 200*l.* I order as much of these sums to be paid out of my rents as can, till the estate can be sold, and then I allow my executor to satisfy himself for all his care, trouble, and charge, and desire him to dispose of the remainder as he shall think fit, to charitable uses, as to charity schools, or otherwise. I give all the furniture of my house to *Mrs. B.* my servant, except the writings in the scrutore, which belongs to my executor.

August 18, 1731.

W. Beaumont.

The latter end of *October, 1737*, *M. B.* died, and the 10th November instant *W. B.* the testator died.

There is another will made so long ago as 1700, and by that he gives his estate to his younger brother, who is since dead without issue.

Mr. S. his heir at law, and also next of kin to the testator, and to his deceased brother, but was not known to either of them at the time of making the will, but the testator and he has been intimate since, and the testator on his death-bed, and two or three days before he died, declared the will was not to his mind, and that he would alter it.

The appointment of the executor is all interlined by the executor himself, and no memorandum made; it was done before execution, and the will is said to be contained in one sheet of paper: Therefore

Query 1st. Is the will itself sufficient to carry the estate to the executor against the heir at law, especially as the word *devise* is not used, nor any word of *inheritance*, nor is for payment of debts; and as the schedule was not annexed to the will at the time of executing it, is oddly worded, and is not witnessed by any person, though it seems to be testator's own hand-writing.

Opinion.

Opinion. There being no witnesses to the schedule, and the schedule not being annexed to the will at the time it was executed, I am of opinion the will is void as to any freehold estate which may be affected by it; but in other respects there does not appear to be sufficient objection against it.

Query 2d. Do not the words in the schedule that desires his executors to dispose of the remainder to charitable uses, bring this within the mortmain act? If so, how much of the will will be good, and to whom will such part that does not pass by the will go?

Opinion. If the will were good in other respects, yet I think it would be void so far as it relates to charities to arise out of the lands.

Query 3d. As Mrs. B. died before testator's will, the household goods and arrears of rent pass to the charitable uses under the word *remainder*? Or is that confined to the monies arising by sale, so as to carry those goods, and all arrears of rent to the next of kin, as an undisposed part of the personal estate?

Opinion. The will is very dark in this particular; but I think the goods will go to the charity under the bequest of the residue; but I cannot say that this is a clear case.

Query 4th. Supposing the legacy to Miss B. good, does it vest so as to go to her executors or administrators, if she dies before marriage, or to carry interest in the mean time?

Opinion. It never vests, nor can it go to executors, if she dies before marriage, nor will interest be allowed till she marries.

Query 5th. A caveat is entered in the prerogative court against proving the will; will it be of any prejudice to the heir at law to withdraw it, and permit the will to be proved in the prerogative court?

Opinion. Whether the will be proved or not, the heir at law cannot be affected, nor will the caveat or withdrawing it be of any consequence to the heir at law as to the real estate.

Query 6th. Upon the whole case, what method is proper for Mr. S. to take to get into possession of the estate, and to set aside the will?

Opinion. Mr. S. must bring an ejectment, there not appearing any legal incumbrance in the way of his legal title.

29th December, 1737.

H. Eazackerley.

C A S E.

T. A. by his last will, dated 19th August, 1709, devised as follows: Item, I give and bequeath unto my dear and loving wife M. and her assigns, all those my messuages, tenements, and hereditaments, with the appurtenances, situate in *Blackfriars, London*, which I lately purchased of S. C. Esq; to hold to her and her assigns, for and during the term of one year, to commence from that, of the four most usual quarterly days in the year, which shall happen next after my decease, and from and immediately after the expiration of the said term of one year, to commence as aforesaid, I give and devise the same premises in *Blackfriars* unto and amongst all and every the children of my brothers and sisters as shall be living at the time of my decease, and their heirs respectively, in equal shares and proportions; and my mind and will is, that my niece A. A. daughter of my brother W. A. shall have ten pounds *per annum* during the term of her life out of the said estate; and my mind and will is, and I do hereby direct, and appoint that my loving brother J. A. and E. S. and the survivor of them, shall receive and take the rents, issues, and profits of the said premises in *Blackfriars*, until my nephews and nieces shall have respectively attained the age of twenty one years, or days of marriage, and apply the same towards their support, maintenance, and education; and by the said will gives the reversion of the freehold houses in the *Strand* after the death of his wife to T. A.

The testator soon after died, and his widow possessed the estate till the year elapsed, and ever since the trustees have applied the rents and profits of the estate according to the will.

The widow refuses to deliver the writings of the said *Blackfriars* estate to the devisees or trustees.

Query. Whether a court of equity will not, as her estate was determined in the premises in one year after her husband's death, compel her to deliver up the writings either to the devisees or legatees.

Opinion. I think a court of equity will oblige the widow to deliver those writings to the devisees, if of age, or to their guardians, if under age.

Query. As to the reversion of the estate in the *Strand*, whether the said court will not compel the said widow and executrix to let the said T. A. have inspection and copies of the writings, he wanting to dispose of the same, so far as to satisfy the purchaser?

Opinion. I conceive that T. A. has a right to inspect those writings, and to have them deposited in court, or in some third hand, for the equal benefit of himself and the devisees for life, and to take copies of them, if he thinks fit, and that the court will decree it accordingly.

Query. Several of the children having died since the expiration of the one year that the executrix held the said estate after testator's death, if their said share of the said estate was not so vested in them as that their share descended to the heir at law of the party so dying, and not to be divided amongst the surviving children.

Opinion. I think that the brothers and sisters took by this devise several estates as tenants in common, and not as joint-tenants, and therefore that their respective shares descended on their death to their respective heirs, and did not survive to the rest of the surviving brothers and sisters.

November 15, 1726.

Dudley Ryder.

C A S E.

THE plaintiffs are merchants at *Leeds* in *Yorkshire*, the defendant lives in *London*, and trades in woollen cloth; the plaintiff *H.* about *October 1736*, applied to the defendant, and requested he would deal with them rather than with one *B. C.* who lived at *Leeds*, with whom the defendant then dealt; and to induce defendant so to do, he said that *C.* was not in circumstances to give any large credit, but that they were able, and would give 12 months credit; which the defendant replied, he desired only the usual credit, whereupon the said plaintiff *H.* replied, that is six months, and desired the defendant would give an order for some goods, and he would give six months credit; upon this the defendant gave an order for goods in the invoice mentioned, of sorts of which they shewed him a sample and they sent the goods to defendant's order in *Holland*. The goods did not answer the sample. Although the goods were not delivered till the latter end of *November 1738*, yet on or about the 18th day of *October 1738*, they arrested the defendant. The defendant has a witness to prove that the plaintiff *H.* said he would send the goods, and give six months credit, tho' he has declared, that the defendant was indebted to him the 18th *October 1738*, which was not a month from the buying, and it is not certain the goods were then delivered in *Holland*. Some of the defendant's witnesses can prove the goods did not answer the sample, and that they were short of the proper measure in *Holland*.

Query. It is said by the custom of the city of *London*, any person may arrest another, and hold him to bail before the day of payment; but in that case they must sue out another writ after the day of payment is elapsed, and declare on the last writ; and the writ to declare on the first, which the plaintiffs have done, is wrong; is that so? and have the present plaintiffs, who live at *Leeds*, that privilege? If not, are they not liable to an action for false imprisonment.

Note; The defendant would willingly keep off payment till *Michaelmas term*, if possible.

Opin

Opinion. I am of opinion, that if the defendant can prove that those goods were sold for six months credit, and the declaration is before the expiration of those six months, the plaintiffs must fail in this action, and defendant must plead the general issue, and give this in evidence.

R. Draper.

C A S E.

M R. S. E. T. being seized in fee of five acres of freehold land, on a treaty of marriage with one Mr. T. P. by lease and release, dated 10th and 11th of January, 1688, made between the said E. T. of the first part, R. T. and J. T. of the second part, and T. P. of the third part, for the settling, disposing, and limiting the said five acres, to such uses, intents, and purposes as therein aftermentioned, did grant, release, and confirm the said premises, unto the said R. T. and J. T. and their heirs, to hold to them, their heirs and assigns for ever; from and after the said marriage, the same to the use of the said T. P. and the said E. his intended wife, and the survivor of them, during the natural life of the said T. P. and from and after the decease of the said T. P. to and for the use and behoof of such person or persons, and for such estate and estates as the said E. at any time after her said intended marriage should, by writing under her hand and seal, in the presence of three or more credible witnesses, direct, limit, or appoint; and for want of such direction, limitation, or appointment, to the use of the said E. and her heirs, from and after the decease of the said T. P.

Soon after the said marriage took effect, and by lease and release, dated 19th and 20th November, anno 2 W. & M. 1690, made between the said T. P. and E. his wife, of the one part, and E. F. and T. O. of the other part, the said T. P. and E. his wife, for the settling, disposing, and limiting the said five acres of land, to such uses, intents, and purposes as therein after is mentioned, did grant, release, and confirm the said premises to the said E. F. and T. O. and their heirs, to hold to them, their heirs and assigns for ever, to the use and behoof of the said T. P. and E. his wife, during their natural lives, and the life of the longer liver of them; and from and after both their deceases, then to the use and behoof of the heirs and assigns of the said T. P. for ever, with a covenant from the said T. P. and his wife, in the said Michaelmas term, to levy a fine, *de droit come ceo qui &c.* which fine was to enure, and the said E. F. and T. O. and their heirs, were to stand seized of the premises, to the uses as in the second deed, and in Hilary term following, a fine was levied accordingly.

In 1702, P. first mortgaged and afterwards sold the said five acres for a valuable consideration, subject to his wife's estate for life, and it has since been sold to others, and another fine levied, and Mrs. P. is still living, but never insisted on more than an estate for life till lately.

N. B. By the first deed before marriage, the five acres are vested in the two *T.*—'s. their heirs and assigns, to the uses therein mentioned; and by the second deed executed by the husband and wife, who was a feme covert, and compelled to execute the same by threats, as she is ready to swear, if her oath could be admitted, and both only tenants for life, with power to the wife to direct, limit, or appoint as above stated, the premises are granted to *F.* and *T.* in fee, to the use of *P.* and his wife for life, and to the longest liver, and after their deceases, to the heirs and assigns of the said *T.* *P.*

Note likewise, That the power reserved in the first deed is to such persons as the wife, by any deed or deeds, attested by two witnesses, shall direct, limit, or appoint; and this limitation does not being to take place till after the death of both husband and wife.

Query 1st. Will the words (*to the heirs and assigns of P.*) be a sufficient description of the person that is to take after the decease of the said *P.* and his wife?

Opinion. I conceive that the limitation to the heir of *P.* was good, and that the heir of *P.* after the death of him and his wife, might have taken, if nothing further had been done by *P.*

Query 2d. Will the last deed, executed in the manner above stated, be deemed, either in law or equity, a proper execution of the power in the wife, reserved by the first deed.

Opinion. I am of opinion, the lease and release, executed after the marriage, was a good execution of the power; but if not, there is no doubt, but thereby, and by the fine, the same was well settled in the manner it is there done.

Query 3d. How far will the fine operate, the freehold being vested in the two *T.*—'s. and their heirs.

Opinion. The freehold was not in the two *T.*—'s, but if it had remained in them, the fine would have extinguished the powers reserved to the wife by her marriage settlement, and have barred the remainder in fee, limited for want of appointment.

April 12, 1739.

W. Melmoth.

C A S E.

A. *B.* spinster, having forfeited her virtue, became afterwards acquainted, amongst others, with *C. D.* and he taking a particular liking to her, voluntarily gave her a bond in 500*l.* penalty, for payment of an annuity of 2*l.* to her and her heirs for ever; but, some time af-

terwards, reflecting it would be a perpetual *lien* upon him, he prevailed on *A. B.* to give it up, and to accept in lieu thereof another bond in the same penalty, for payment of 21*l.* a year for her life only, a copy of which is annexed.

The bond in question was drawn by a clergyman, a friend of *C. D.*'s, and the words (*yearly, and every year, during the natural life of the said A. B.*) are interlined with *C. D.*'s own hand writing.

A. B. insists the words were interlined before the execution, and that since the execution it was never in the custody of *C. D.* and one of the subscribing witnesses will testify the same. On the other hand, *C. D.* insists the interlineation was made after the execution, and not re-executed, and consequently, that tho' such interlineation be of his own hand, he can plead *non est factum* to it; and if that should fail him, as it was given without any consideration, equity will relieve him against it.

Query. *A. B.* is since married to *E. F.* therefore is an action at law maintainable on the above bond? and if so, must it be brought in the name of *E. F.* and *A. B.* his wife, or only in the name of her husband?

If the subscribing witnesses to the bond prove the execution of it, and both should be not able to say whether there was any interlineation or not, will *C. D.* at law be allowed to bring any other witnesses to prove the interlineation was after the execution of the bond? and if he should bring any such witnesses, will it avail him, as the interlineation is of his own hand-writing? or will equity relieve *C. D.* against it, as a bond given without a consideration, or for any other, and what reason?

Opinion. I am of opinion, that an action at law may be maintained in the name of *E. F.* and *A. B.* his wife; and I think it will be presumed, that the interlineation was made before the execution of the bond, and the rather because it is made with the proper hand-writing of *C. D.* and if one of the witnesses proves the fact to be so, it will very strongly confirm the presumption, and require a very strong proof on the other side to contradict it: but, on the contrary, if he can prove that this interlineation was wrote after the execution, (tho' with his own hand) and this proof should be more satisfactory to a jury than that given in favour of *A. B.* undoubtedly it will avail *C. D.* in an action upon the bond, and upon the oyer of it the words *interlined* should be omitted, yet if the interlineation be after the execution, and with the privity and consent of *A. B.* the bond is altogether void; but if it was done by any clandestine means, without the privity of *A. B.* I think it would not avoid it as a bond without the interlineation; but that will make the bond of small value.

I do

I do not see any facts stated which can be sufficient grounds for relief against this bond in a court of equity.

31st December, 1735.

N. Foxakerley.

C A S E.

T. *R.* and *J. M.* mariners and merchants, in *January* last, took up divers sums of money, on their joint and separate bottomry-bond, and agreed that the money should be invested in goods and merchandize on their joint account, and that such merchandize should be sold in the *East Indies* with their joint consent, for the best price that could be got for the same, and if either sold without such joint consent, the party so selling to bear any loss that should happen thereby. The money arising by the sale was to be returned to *England* by the first conveyance, to discharge the joint and separate bond.

T. R. one of the parties, is now under arrest for a separate debt, and possibly may have a commission of bankruptcy sued out against him.

Query 1st. Therefore, supposing a commission should be sued out, must not the joint effects be first applied in paying the joint creditors? and will not the joint creditors come in equally with *T. R.*'s separate creditors to a dividend of his separate effects?

Opinion. If a commission of bankruptcy be sued out against *T. R.* I apprehend that the joint effects will be first liable to pay the joint creditors; but in case a separate commission is sued forth against *T. R.* his joint creditors will not be let in to have a rateable satisfaction out of his separate estate with his separate creditors; but can be satisfied out of the surplus of his separate estate, if there be any surplus thereof.

Query 2d. Can *J. M.* safely sell the effects without consulting *T. R.* if he should not go the voyage? and may he send over and discharge the joint bonds, pursuant to the articles, safely and without prejudice?

Opinion. As the articles are founded upon an agreement between *T. R.* and *J. M.* to trade to the *East Indies*, and to dispose of the merchandizes there, if *T. R.* should be hindered from going, I think *M.* may safely sell the partnership effects in like manner as if *T. R.* had died, without consulting him, and may send over and discharge the joint bonds; the consent must be understood to be in case the other was at hand to give or refuse it.

Query 3d. If the joint creditors should agree to give up the joint bond, and take *J. M.*'s bond for the goods bought in partnership, would that prevent a moiety of the produce of such goods being

being considered as *T. R.*'s effects, or subject to a distribution among all his creditors?

Opinion. I apprehend that if the joint bonds are given up, that it ought not to prejudice *T. R.* or the assignees under any commission of bankruptcy against him, unless *T. R.* not being a bankrupt, will consent thereto: but if he has committed any act of bankruptcy, it will not be advisable to take up the bond.

9th March, 1737.

Fran. Copper.

C A S E.

AND it is further agreed, by and between the said parties to these presents, that the said *J. S.* his heirs and assigns, shall and will, before the expiration of this present demise, at the reasonable request of the said *A. R.* his executors, administrators, and assigns, renew, lett, and demise, the within mentioned premises, unto the said *A. R.* his executors, administrators, and assigns, for any term or time, not exceeding twenty-one years, under the same rents, covenants, provisos, and agreements, as are herein mentioned. Therefore,

Query. Whether it is not advisable for Mr. *R.* to execute a counterpart of a lease *mutatis mutandis* as the last, and tender that to *J. S.* and demand of him to execute a lease pursuant to the above covenant, and whether it must not be dated now to commence from the expiration of the old lease, which is *Michaelmas* next, and whether the covenant above mentioned ought not to be left out of the new lease? and must Mr. *R.* determine now for what certain term he will have it made?

Opinion. I am of opinion, that Mr. *R.* ought first to tender a lease of the same tenor and purport exactly, and with the same covenants as this lease to Mr. *R.* save and except the covenant for a further lease, and save and except the term to be mentioned in the lease to be tendered; and in case such lease so to be tendered is refused, the proper way for Mr. *R.* will be to bring a bill in equity for a specific performance of this covenant to make a further lease.

7th July, 1738.

Rob. Fenwick.

C A S E.

A. Being a gentleman of fortune in the country, desired *B.* who was coming to *London*, to bring down an agreeable woman to him when he returned. *B.* prevailed on *C.* to go down with him to *A.*'s country seat, where she arrived the 27th of *October*, 1725, and cohabited

cohabited with *A.* at times till the 15th November following, and then returned to *London*.

9th April, 1726, *C.* by letter acquainted *A.* she was with child by him, and requiring a maintenance, *A.* thereupon employs a friend in town to enquire into the truth of it, and if she proved so, and would swear it on him, to provide for them. *A.*'s friend accordingly acquainted *C.* therewith, but she refused to do it; and 2d June following, one of the parish officers writes to *A.* in *C.*'s name, and there she threatens to visit him in the country, and to expose him to his wife &c. unless he forthwith provided for her: upon this *A.*'s friend, by his order, again attended, and made the same offer as before; but she still refused to swear the child to him; and being asked what would satisfy her, she said she thought he might give her one hundred guineas. About the 20th of the same June, *A.*'s friend took her up by a justice's warrant, to give security, or swear the child, and then she refused to swear the child till she had consulted with the parish officer before mentioned; and upon his telling her she must be conveyed to the parish where she had a settlement, or swear the child, she then swore it on *A.*

Upon this *A.*'s friend appointed a day for meeting the rest of the parish officers, to agree with them for keeping her and the child, in case she should prove to be pregnant, and accordingly they met at the time appointed; but, instead of appearing, she thought fit to quit the parish, and secrete herself, and, it is presumed, by the before mentioned officer's advice, who was a particular friend to her through the whole affair.

Note; She was a person of a loose character before she went down to *A.* as well as after, and frequently visited by the said officer; but nevertheless it is apprehended she was not even pregnant at the time the several letters aforesaid were wrote, and that it was purely a contrivance between *C.* and her friend to get money out of *A.*

Query. Therefore, whether *A.* cannot indict the officer as a confederate with *C.* and oblige him to produce her? or what other remedy is proper to bring him and her to justice?

Opinion. As this case is stated, there seems to be a contrivance and confederacy between *C.* and the parish officer, falsely to charge *A.* to be the father of a bastard child, and to extort money thereby from *A.* This, I conceive, is an offence indictable, for which both *C.* and the parish officer may be indicted: Also I think this matter proper to be laid before a justice of peace, who may examine into the same, and bind over the officer to the next quarter-session, or sessions of the peace, to answer such confederacy and misdemeanor.

J. Raby.

C A S E.

Cases in Law and Equity;

C A S E.

C. *N.* citizen, and barber surgeon of *London*, in his life time placed out the sum of 50*l.* in the name of *S.* his daughter then an infant, and for securing the repayment thereof, a mortgage of certain leasehold lands was made to her, her executors, administrators, and assigns.

The said *S. N.* in 1727, intermarried with *J. M.* citizen and silk thrower of *London*, and on such marriage *C. N.* entered into articles to give her 600*l.* fortune, and her husband agreed to leave 1200*l.* to her if she survived him.

The said 50*l.* above mentioned, was never mentioned to the husband, but since his wife's death, he finds she received the interest both before and after her marriage, and has given one or more receipts for such interest in the name of *M.* but the mortgage remained in the hands of a third person.

About the 12th *May*, 1728, *S. M.* died, leaving one daughter named *S.* now an infant of the age of — years.

In 1732, *C. N.* made his will, in the words following; I give, devise, and bequeath unto my loving wife *S. N.* all and singular my real and personal estate, whatsoever and wheresoever, after my just debts and funeral expences are thereout first paid and discharged; to hold the same unto her the said *S. N.* for and during the term and of her natural life, and from and immediately after her decease, I give, devise, and bequeath my said real and personal estate unto my granddaughter *S. M.* spinster, and to her heirs, executors, administrators, and assigns for ever, and of his will appointed *S.* his wife executrix, and soon after died without altering the same.

S. the widow proved her husband's will, and possessed herself of his estate, and among other things of the mortgage to *S.* her daughter, and four *East India* bonds, and since his decease with money received in discharge of debts owing to the testator, purchased four other *East India* bonds, and hath received the interest of the said eight *East India* bonds, ever since her husband's death, and hath applied the same to her own use.

She having some time ago lost or mislaid the aforesaid eight *East India* bonds, the company have granted her new bonds, which she hath taken in her own name, so that they will not appear to be any part of the testator's estate, and they pay the interest of the new bonds as they did of the old ones, but they at present keep the bonds in their own custody, by way of security against the bonds lost.—The executrix has nevertheless taken upon herself by deed, to assign the bonds &c. to trustees upon trusts, contrary to the testator's will, and it is apprehended she has spent some part of the principal of the testator's estate.

Mr. *M.* since his wife's death being informed of the said mortgage, has demanded it of the executrix, and being informed of the said deed of trust, and knowing her to be in low circumstances, has also requested her to give security that the said *East India* bonds, and

other the testator's personal estate shall not be embezzled, but after her death shall come to his daughter *S.* according to her grandfather's will; but with regard to the mortgage, *S.* the executrix, insists that as *S.* her daughter was an infant, it cannot be supposed the *50l.* lent thereon was her money, and that consequently it must be the testator's, and if so, though taken in her name she must be considered only as a trustee for her father, and that therefore she as executrix to him, has a right to keep the possession of the mortgage, and to call in the money thereby secured, and to apply it to her own use: whereas Mr. *M.*'s said wife had several sums given to her during her infancy, and her father the testator improved them, at least placed them out on the mortgage in question for her benefit; and it can hardly be supposed he would have taken a mortgage in an infant's name IN TRUST for himself, who could not declare that trust, nor assign that mortgage if called in; and besides, as she received the interest before her marriage, and afterwards too when she had left her father, and gave receipts for it in the name of *M.* and for any thing appears to the contrary applied it to her own separate use; her father never would have suffered it, had it not been her own property, and kept in her father, or such third person's possession, the better to conceal it from her husband. Therefore,

Query. As Mr. *M.* is administrator to his wife, and the mortgage is still in her name, will not the deed alone be sufficient evidence of Mr. *M.*'s right, unless the executrix of Mr. *N.* by positive evidence shews it was a trust only; and if it be his right, what method is adviseable for him to take to get possession of the deeds and premises?

Opinion. I am of opinion, that Mr. *M.* *prima facie*, is well entitled to this mortgage; first, as it was made in the name of his wife; secondly, as she received the interest; and thirdly, from the nature of the transaction, as 'tis very probable Mr. *N.* the father, might make a gift of this value to a daughter: and 'tis very improbable he should take a trust mortgage in an infant's name, who could not assign or execute the trust, as is properly observed by the case. Therefore, upon the whole there appears to me very strong evidence, that this mortgage was originally taken the proper use and benefit of the daughter, and does now belong to her husband; and as to the daughter's not having the possession of the deed, that seems to me well accounted for, it being intended that should remain as a private fund for the daughter's use, for which reason, it was proper to conceal it from the husband. The method to obtain possession of this mortgage is, for Mr. *M.* to file a bill in *Chancery* against the executrix, (stating his case there to the effect it is here) and to pray a discovery of the transaction, and that the mortgage deed may be delivered up to him, and that the arrear of it may be paid to him; upon which bill I apprehend the plaintiff will obtain relief.

Query. The widow and executrix of *C. N.* says that the eight *East India* bonds, and other the personal estate of *C. N.* shall be forthwith coming at her death; but she insists she is not compellable by law or equity to give any such security, being an executrix; she also insists as her husband was a freeman of *London*, (she can notwithstanding her having proved his will) waive the benefit of it, and come in for her share of his personal estate, as a freeman's widow; her share, she insists, is half, as his daughter *M.* died before him, though the said *M.* has a daughter *S.* still living. Therefore as she is in low circumstances, and has taken on her to make such deed of trusts, will not a court of equity oblige her to give security, that the *East India* bonds and other personal estate shall be forthwith coming at her death, or order them to be deposited in the bank, and she to receive the interest during her life: and can she now, as she has proved the will, and disposed of part of the personal estate, and actually received the interest and produce of the same, ever since the testator's death, for her own use, refuse to abide by the will, and resort to the custom of *London*, and claim her share of the principal as a freeman's widow, especially as she has proved the will since the late act of parliament, that enables citizens to dispose of their estates, &c. and if so, what share will she be intitled to, and will not Mr. *M.* be intitled to the residue as husband and administrator to his late wife, in his own right, or will his child be intitled to the same? and if the latter, can the widow and executrix of *C. N.* by assigning to trustees, or otherwise, prevent Mr. *M.*'s receiving it for the benefit of his daughter: and upon the whole circumstances of this case, what method is most proper for Mr. *M.* to take to gain possession of the mortgage deeds and premises, and also to secure his daughter's, and his interest, in the *East India* bonds and other personal estate?

Opinion. If the widow has not waived her title to her husband's personal estate, she by the ancient custom of *London*, is intituled to one moiety of her deceased husband's personal estate, besides an allowance of her widow's chamber, which is usually a 40th part, so as it exceeds not 50*l.* in the whole. But I am inclined to think, that by proving the will, and acting under it for so long a time as is mentioned in the case, the widow has waived her title under the custom, and submitted to abide by the will; and that she cannot now set the same aside as void and against the custom, as otherwise she might have done. And therefore as by the will she has only the use of the whole personal estate during her life devised to her; and as the same is devised by the testator to his grand-daughter after her decease; I am of opinion, that a court of equity upon a bill exhibited by the grand-daughter by her next friend, (stating the case to the effect it is here) will either compel the executrix to put in good security for the same in favour of the grand-daughter, according to the devise, or will direct

the trust estate to be brought into court, to be deposited into the bank, to be preserved for her use, 'till it shall become payable to her according to the will, especially, as the widow is but in low circumstances, and is likely to embezzle the estate, has actually lost the *East India* bonds, and has taken others in her own name. And also as she by deed of trust, has thought proper to dispose of the estate, contrary to the disposition thereof by her husband's will, as the bonds are in the possession of the company, I am of opinion they must be made parties to the bill. Neither Mr. *M.* the husband, nor his daughter, as Mr. *M.*'s wife died before her father, are intituled to any part of his personal estate by the custom of *London*, the custom not extending to grand-daughters.

If Mrs. *N.* could not resort to her customary claim, (which is a moiety of her husband's personal estate, and her chamber, as I observed before) the residue of the estate would go to the granddaughter as next of kin to Mr. *N.* the testator, and not to Mr. *M.* her father, either by the custom of *London*, or the statute made for the distribution of intestates estates, Mrs. *M.* dying, as is before taken notice of, in the life time of her father.

February 29, 1735.

Sim. *Urin.*

C A S E.

29th Dec. *T.* *L.* esq; by his will of that date, gives 50*l.* to and for 1727. the use and benefit of the poor of *Great* and *Little Sheppey*, to be raised out of his real and personal estate, and laid out in the purchase of lands by his executors, as soon as conveniently might be. The said lands to be conveyed to his executrix, and her heirs, IN TRUST for that purpose only, and gives several other pecuniary legacies, and devises all his houses in *Great Sheppey* particularly named, and the lands thereto belonging, to his daughter *L. H.* for life; remainder to her son *T. H.* and his heirs.

Provided the said *T. H.* shall, within six months after his mother's death, pay unto *C.* and *L. H.* 300*l.* between them, and in default of payment of the said 300*l.* he devises the said premises to *W. W.* esq; and *E. R.* and their heirs in trust for the said *C.* and *L.*

Gives unto *W. W.* and *R. H.* and their executors, &c. the rectory and manor of *Baxterley*, and a house in *Coventry*, with the appurtenances, and all sums of money owing to him at his death, upon mortgage, bond, note, or otherwise: Upon trust that they apply the rents and profits of the said rectory, and of the said mortgage, and place at interest all the said monies, to and for the sole use and behoof of the children of his daughter *L. H.* living at her death, their executors, and assigns.

Provided always and upon condition, and upon this further trust, That in case his daughter *I. F.* should survive her then husband, but not otherwise,

otherwise, that then the said *W. W.* and *R. H.* their heirs and executors, should raise and pay out of the last mentioned premises, unto his daughter *I. F.* during her life only, the yearly sum of 20*l.* by half yearly payments. But if she or any person in her right should controvert either of the settlements by him made, on the marriage of his two other daughters, then the payment of the yearly sum of 20*l.* to cease. And the will contains these words *viz.*, that the said *W.* and *H.* shall sell the said rectory and house (if necessary) and apply the money and all the said principal sums of money to and for the uses, and in like manner as they might apply the rents and profits of the said rectory and house, and the interest of the sums of money.

Gave his son in-law *J. F.* and the said *I.* his wife, 20*l.* to buy them mourning, to be paid six months after his the said testator's death.

And as to all and every his household goods, furniture, cattle and stock, his will was that his daughter *L.* should have the use thereof for her life, and after her death gave the same to her son *T. H.*

And as to all the rest and residue of his real and personal estate not before devised, he gave the same to his daughter *L.* her heirs and executors, &c. for ever; and then goes on in these words: But my will and express mind and meaning is so, I do hereby declare, and order that my debts, legacies, and funeral expences shall in the first place be paid, answered, and discharged by my executrix, at her discretion, out of my money, stock, and personal estate, and then the rest and residue thereof shall so be appropriated, and applied, as I have above directed.

Makes his daughter *L. H.* executrix of his will.

Mrs. *H.* has paid all the legacies given by the testator's will.

The rectory and manor of *Baxterley*, and house in *Coventry*, given to Mr. *W.* and *H.* upon the trust aforesaid, have not been sold. The rectory and manor yield no profits, and it does not appear that the testator was seized or possessed of any house in *Coventry*.

Mrs. *H.* has got in and received all the money owing to the testator at his death, and paid Mrs. *F.* her said annuity of 20*l.* ever since the death of her husband, and all the said monies owing the testator at his death have been applied in making such payments.

Mr. *H.* is dead, and Mr. *W.* has not acted in the trust, and the said rectory remains unsold. The incumbent thereon is 50 years of age or thereabouts, and it is apprehended the same would now sell for 10*l.* and no more.

Mrs. *H.* having applied the sum of 315*l.* part of the monies owing to the testator at his death, in and towards the payment of his debts and legacies, hath nothing in her hands devised to *W.* and *H.* whereby to answer the growing payments of the annuity.

The monies owing to the testator at his death amounted to 461*l.* and no more, and the household goods, stock, and cattle specifically bequeathed to Mrs. *H.* for life, and then to her son, were of the value of 300*l.* and no more, and the debts of the testator, and the other legacies amounted to the sum of 315*l.*

Query. Whether any other part of the estate of testator, save what was devised to *W.* and *H.* are subject or liable to the payments of the

the said annuity to Mrs. F. the fund appropriated for that purpose being insufficient.

Opinion. I am of opinion, that no other part of the estate is liable to the annuity.

Query. Whether Mrs. H. the executrix, is at liberty or not to pay the debts and legacies out of the money arising by the sale of the rectory, &c. and the money owing to the testator at his death, given Mr. W. and H. upon the trust aforesaid, or out of the stock given to her for her life, and afterwards to her son, the said money and stock being all his personal estate; or out of what fund is she to pay the debts and legacies; and whether as the 50*l.* given to the poor of Great and Little Sheppey, is to be raised out of the real and personal estate of the testator, the executrix may pay that sum out of the money and stock, specifically bequeathed aforesaid, or whether there being a default, must not she raise the same out of the real estate?

Opinion. The legacy of 50*l.* to the poor of Great and Little Sheppey is charged upon the whole real and personal estate; the only fund left proper by the will to pay the debts, and the other legacies, and funeral expences, is the rest and residue of the real and personal estate mentioned in the will, to be undisposed of, and given to the daughter L. H. and the money, stock, and personal estate, which I think will all be liable to all the debts, funeral expences, and legacies; and if that fund be deficient, the legacies, except the said 50*l.* for which the said whole estate is made chargeable, must lose for want of a fund to pay them; all the gifts of other parts of the estate, are given in the nature of specific gifts or legacies, and consequently they are not to be broken into in favour of legacies, nor particularly charged thereupon; so that the money arising by the sale of the rectory, will not be liable to debts, legacies, or funeral expences, it not appearing to be a chattel interest, if it be, it may be deviled as part of the personal estate; indeed if it be a chattel interest, it will be liable as being part of the personal estate, which is indefinitely subjected to debts, legacies, and funerals. The case being generally stated, and the question being generally put without distinguishing the nature of the estates, or of the debts, I have been as particular as I could, and I hope it will be understood. But this I must add, that creditors stand upon a different footing, for if the fund be deficient they will have a preference, and they will not be excluded of laying hold of any part of the estate which they can affect, as creditors by specialty or otherwise. If the funds expressly appropriated to debts, legacies, &c. be deficient, the said 50*l.* charitable legacy must be raised out of the other estate.

July 27, 1745.

N. Fazakerley.

C A S E.

T. B. late of *Reading*, draper and salesman, being possessed of a large stock of shop goods, household goods, plate, and other personal effects to the value of 800*l.* and upwards; and also possessed of a house in *Reading* aforesaid, held by lease from *A. B.* esq; for lives, under the yearly rent of 23*s.* 4*d.* renewable on payment of 7*l.* 10*s.* at the death of each life, and being so possessed, the said *T. B.* about 1720 went a voyage to the *East Indies*, but, before his departure, came to a verbal agreement with his brother *A. B.* that the said *A. B.* should take possession of his said house and effects in his absence; and the said *T. B.* accordingly left the same in his custody, for the support and maintenance of *E.* his wife, and *T.* his only child, then a minor; and also, in case he should die in the voyage, then in trust for his said wife and child.

That said *T. B.* died in the said voyage, and the said *A. B.* took all his effects, but took no care for the support or maintenance of *T. B.* s. said wife or child.

About three years afterwards the said *A.* took the said *T. B.* the younger, to keep, and provided for him till the said *A.* s. death, which happened about 16 or 17 years since; but took not the least care for the maintenance of the said *E.* widow of the said *T. B.* the elder.

The said *A. B.* before his death made his will, and appointed the said *T. B.* the younger sole executor thereof.

The said *E.* never took any measures to oblige the said *A.* to come to an account with her, and pay her her distributive share of her late husband's effects, fearing it should be prejudicial to her said son, if she thereby incurred the displeasure of the said *A.* his uncle; and also avoided it during her son's minority, hoping that when he came of age, and to be in possession of his estate, he would have had the duty and gratitude to make her amends, for all the hardships she suffered from his uncle on his account, but he refuses so to do.

The said *E.* about 18 years ago, intermarried with one *F. P.*

The said *T. B.* the younger, some time since attained his age of 21 years, and has taken possession of all his late father's estate and effects; and has in his custody all the accounts of what his uncle did in his said trust: whereby it appears that a very considerable sum was in the hands of the said *A.* in his life time, and now in the hands of the said *T. B.* the younger, as the surplus of the personal estate of the said *T. B.* the father, exclusive of the said house.

The said house at the death of the said *T. B.* the elder, was let at 16*l.* per annum, but on account of several reparations done thereto, by the said *A.* just before his death, with monies he had in his hands of the said *T. B.* the elder; the rent was advanced 26*l.* per annum, and has so continued ever since.

We cannot say, whether the said *A. B.* or the said *T. B.* the younger, ever administered to the said *T. B.* the elder.

Query.

Query. Whether the said *F. P.* and *E.* his wife, as the said *E.* was the widow of the said *T. B.* the elder, are not intitled to a third part of the surplus of the personal estate of the said *T. B.* the elder, by virtue of the statute for the distribution of intestates estates, and of the interest thereof from the death of the said *T. B.* the elder, to this time? And whether they are not intitled to a third part of the said house, and the old and improved rent thereof, from the said *T. B.* the elder's death 'till now? And if so, what measures will it be most adviseable for the said *P.* and his wife to take for the recovery thereof, whether by bill in Chancery, or how otherwise?

Opinion. *E. P.* and her present husband in right of her as widow of the intestate, is intitled to a third of the surplus of the intestate's personal estate. But the great length of time which has elapsed since the death of her husband, without her making a claim, will be a great impediment to her recovering it, and the rather, as it will lay her under the difficulty of distinguishing the personal estate of her intestate husband, from any other property that *A. B.* might die possessed of, or that may now be in the hands of *T. B.* her son. But should she be able to ascertain what was the personal estate of her husband, yet as it has all along rested as a matter of account, and her right has never yet been liquidated, so as to create a certain debt, I conceive she will hardly be intitled to interest, unless it be for so much as she is able to prove to have been placed out on securities, or in the funds, so as to have been all along producing interest. The most obvious measure for her to pursue for recovering her right, seems to be by a bill in equity.

With respect to the house, which is stated to have been a lease for lives, according to the case of *Oldham and Pickering*, 2 *Salk.* 464. (a hard determination, but yet never, that I know of, expressly contradicted) it will only be considered as assets for the benefit of creditors, and not be distributable for the benefit of the next of kin. But if it be not so granted to the intestate and his heirs, so as to make the son a special occupant, in case no administration has been granted to any body, it will be adviseable for the widow to apply for it, as a means of intituling her to the benefit of the lease.

March 16, 1744.

T. Clarke.

C A S E.

A. *B.* in *October* last, distrained the goods of *C. D.* for rent due to the said *A. B.* at *Michaelmas* last, and took an inventory, and gave the usual notice, and had them appraised in proper time by two sworn appraisers; but at the request of the said *C. D.* by order under his hand, gave him time to pay the money, which time is since expired, and the said *C. D.* should have taken and had them appraised himself, but has not done it; therefore may not the said *A. B.* sell the goods, and if any overplus, must he leave the same in the constable's hands, or will leaving them on the premises be sufficient? The said *C. D.* after the said *A. B.* had distrained, made a bill of sale of all his goods to his brother *E. D.* towards satisfaction of money, and is since in prison, and the said *E. D.* has continued, and still is in the house; therefore is that bill of sale good; and if so, is the said *E. D.* obliged to pay the said *A. B.* or has not the said *A. B.* the liberty of disposing of the goods for payment of his rent; and in case a commission of bankruptcy should be issued out against the said *C. D.* will not that set the bill of sale aside?

Now there is another quarter's rent due to the said *A. B.* at *Christmas* last, can he make a second distress, and how can he get the possession of his house?

Therefore, upon the whole circumstances, what method is most proper and advisable for the said *A. B.* to take to be safe and secure, and to get the possession of his house?

Opinion. *A. B.* may safely sell the goods by virtue of the distress, provided the appraisers were duly sworn by a constable of the parish before they appraised them, and a regular possession has ever since been had of them by *A. B.* but *A. B.* can only retain to himself on sale the money he distrained for, and the costs of distress, appraisement, and sale, and not the quarter's rent due at *Christmas*.

The bill of sale is of no avail as to *A. B.* nor is he bound to take any notice of it; but if after sale of the goods, and the payment of the rent due at *Michaelmas*, and the appraisalment, distress, and sale charges, any thing remains, the same must be paid into the hands of the constable.

A. B.'s only way to get possession of the house is by ejectment.

E. Filmer.

C A S E.

C. F. being possessed of, interested in, or entitled to, certain freehold and copyhold estates, at *Ashford*, in the county of *Middlesex*, subject to the payment of an annuity of 15*l.* a year to *M. F.* mother-

† H

in-

in-law of the said *C. F.* during her life, he the said *C. F.* did by indenture, for the consideration therein mentioned, convey and assign over the said estates to *W. C.* subject to the payment of the said annuity, and the said *W. C.* reserved out of the said purchase-money 300*l.* in order to pay the same; in which said indenture was a covenant for the said *W. C.* to the said *C. F.* to pay the said 300*l.* within three months after the death of *M. F.* at whose death the said annuity ceased, to the said *C. F.* his executors, administrators, or assigns.

The said *C. F.* by indorsement on the back of the said deed, reciting, that in consideration that *M. F.* his wife, did join with him in levying a fine, and in the conveyance of the freehold lands and hereditaments, and also in surrendering the copyhold lands and estate abovementioned unto the abovenamed *W. C.* and for making some provision for his said wife, and such children as he should have by her, in consideration of 5*s.* to him the said *C. F.* in hand paid by *J. C.* of *Lincoln's Inn*, and for other considerations him thereunto moving, did bargain, sell, assign, transfer, and set over, unto the said *J. C.* all his estate, right, title, and interest, both in law and equity, of, in, and to the said 300*l.* and every part and parcel thereof, to hold to the said *J. C.* his executors, administrators, and assigns, upon trust, that immediately after the death of the said *M. F.* mother-in-law to the said *C. F.* the said *J. C.* his executors, administrators, or assigns, might receive of and from the said *W. C.* his heirs, executors, or administrators, the said 300*l.* or so much thereof as should remain in his hands, and place the same out from time to time on government or other security, and from time to time to alter or change the security or securities for the same, with the consent of the said *M. F.* his wife, and to pay the interest of the said 300*l.* to the said *M. F.* his wife for life, should be a sufficient discharge, and the same not to be liable to the debts of her then present or any future husband; and after her death upon trust to pay the said 300*l.* unto and among the children of the said *C. F.* and *M. F.* his wife, as should be living at her death, share and share alike, but if at the death of the said *M. F.* there shall be no such child or children then living, then to pay the said 300*l.* unto the said *C. F.* his executors or administrators.

Since which the said *C. F.* died intestate, leaving the said *M. F.* his widow, and two children, who are both daughters, and not yet of age, and also the said *W. C.* is since dead, but first made his will, and thereby devised the above estate to his son *J. C.* after the death of his wife, who is since dead, and by her will made *R. L.* and *P. R.* her executors.

The said *J. C.* sold the above estate to *R. R.* subject to the payment of the said annuity of 15*l.* a year to the said *M. F.* mother-in-law of the said *C. F.* who is likewise dead, and the said principal sum of 300*l.* not being as yet paid in, the said *R. L.* has paid the interest thereof to the said *M. F.* the widow of the said *C. F.* deceased, to September last, but now is desirous of paying the principal, upon having a safe and proper discharge. Therefore,

Query. Who can give the said *R. L.* a legal discharge, the said *J. C.* the trustee is dead intestate, *R. C.* the father has taken out letters of administration to his son, whereby he insists on having a power of receiving the said 300*l.* and to give a discharge for the same as administrator to his son, who was the trustee in the indorsement; but the widow of the said *C. F.* has not taken out administration to him; and in the above indorsement there is no letter of attorney to receive and give a discharge; can the said *R. L.* be safe in paying the said 300*l.* to the said *R. C.* administrator to the trustee, without the widow of *C. F.* administering, and joining with him in giving the said *R. L.* a discharge, and will that be a good and proper discharge, or in what manner will the said *R. L.* be safe in paying it, so that he may not be called to an account hereafter, the children being entitled to the said 300*l.* after their mother's death, if living; and in case the money should be misappropriated, whether the said *R. L.* may not be called to an account?

Opinion. It does not seem to be advisable for *R. L.* to pay in the 300*l.* to the administrators of *J. C.* for as the infant children have a contingent interest in that money, as well as the mother, I am of opinion, that her taking out administration to the husband, and joining with *R. C.* in giving a discharge to *R. L.* on his paying the money, will not sufficiently indemnify him, as he has notice of the trusts to which that money is subject; and as infants are concerned in the case, the safest method for *R. L.* to take, seems to be, not to pay the money without the privity and direction of the court of Chancery.

Middle Temple, 10th January, 1740.

Tho. Clarke.

C A S E.

G. *P.* a poor parishioner of the parish of *Low Layton*, on the second of February 1734, having the misfortune to break his leg in two places, Mr. *R. C.* a surgeon was sent for by him and his wife to set it, which he accordingly did, and attended him daily, to the 15th of June 1735. About a fortnight after the accident a vestry was called, and the patient was ordered 8*s. per week*, which was paid by *P.* then churchwarden, or his beadle, to *Easler*, and from *Easler* Mr. *H.* successor to Mr. *P.* paid the patient to his death the said 8*s. per week* for his subsistence. Mr. *H.* also sent Mr. *D.* another surgeon, twice during the patient's confinement, to see whether Mr. *C.* took proper care of him.

It being at last agreed between the two surgeons that it was adviseable to cut off his leg, *D.* acquainted Mr. *H.* with it, and afterwards gave Mr. *C.* advice that he had told him, and that they might delay it till Monday.

And thereupon Mr. *H.* the churchwarden, removed the patient to an hospital, without his or his wife's consent, where he died the night he arrived.

After the patient's death, Mr. *C.* was sent for to a vestry, and was asked by some of the gentlemen, what he demanded for his trouble? to which he answered, 2 s. 6 d. *per* time for every attendance, which would have amounted to about 13*l.* and *W.* their beadle, declared they had resolved to give Mr. *C.* five or six guineas for his trouble, but now they refuse to give him any thing.

Query. Therefore as the churchwardens did not send for Mr. *C.* at first, nor afterwards direct him to proceed in the cure, save tacitly as above, will the sending for Mr. *C.* after the patient's death to the vestry, in order to make him a present, make them liable to pay him a reasonable sum for his trouble?

Or are the churchwardens as such, and in all events liable to pay it, though the patient did not wear a badge as a poor parishioner, or receive alms of the parish, before his misfortune, save once on a like occasion?

Opinion. Mr. *C.* has very slight evidence in this case, and should have had the overseers of the poor, or some of them, to have engaged to be his paymaster. However, as the patient was not of ability to make satisfaction, and received relief from the parish, a little proof will be sufficient to satisfy a jury, that what Mr. *C.* did was upon the credit of the parish."

Query. If an action will lie, will a common *clausum fregit.* do, and must *P.* who was one of the churchwardens at the time *C.* was first sent for, and was out at *Laster*, be sued as well as the now churchwardens, and must it be a joint action?

Opinion. As Mr. *H.* was the only person who appeared to have concerned himself, I think it most advisable, that the action should be brought against him alone, upon a common *clausum fregit.*

Wm. Chappell.

C A S E.

AN indictment was brought against the defendant for conspiring and combining to marry a poor person of the parish of *Dunnington*, to a poor person of the parish of *Hescole*, which said indictment, upon traverse, was found false, and the prosecutor did not appear, but threatens to bring a new indictment.

Query.

Query. If a good action does not lie for damages, especially if the indictment be found malicious?

Opinion. I conceive a good action lies for damages; but as the prosecutor threatens another indictment, I think it proper to waive such action till after the next assizes.

June 11th, 1726.

T. Gordon.

C A S E.

2d January, 1737. *A.* *B.* by his will of this date, gave and devised his manor or lordship of *B.* in the county of *S.* and all and every his messuages, tenements, farms, lands, and hereditaments, in *B.* aforesaid, to *C. B.* deceased, his youngest son, for his life, without impeachment of waste, and to his first and other sons in tail-male, with remainder to his eldest son *J. B.* for his life, without impeachment of waste, and to his first and other sons in tail-male, with remainder to all and every his four daughters, their heirs and assigns for ever, as tenants in common, and the said testator thereby empowered the said *C. B.* and *J. B.* severally and respectively, when, and as they should be in the actual possession of the said manor and premises, by virtue of the limitations in his said will, but not before, or otherwise, to demise all such parts and parcels of the said manor and premises, as then were, or lately had been demised, for the life or lives of one, two, or three persons, or for any term or number of years determinable on the death of one, two, or three persons, so as every such demise be made by indenture in writing legally attested, or by copy of court-roll, according to the custom of the said manor, and there be reserved respectively thereupon, the usual rents, heriots, and services, or more, but not less. *C. B.* is dead without issue-male, and *J. B.* is in possession of the manor.

The testator always granted reversionary leases and copies, as did his predecessors, and so did *C. B.* after possession, and *J. B.* has likewise granted reversionary leases, and copies after possession.

As the number of lives upon the leases, and copies in possession and reversion, never exceeded three, and there is no confinement in the power to the exercise of it to leases or copies in possession.

Query. Whether *J. B.* has not a right under this power to grant reversionary leases and copies, or either, particularly after leases or copies of the testator's, so as the number of lives upon those in possession and reversion, do not exceed three in the whole, and leases be not granted of copyholds, nor copies of leaseholds?

Opinion. I am of opinion, that *J. B.* may, by virtue of the power, upon the dropping of any one life, in a lease or copy, add a new life to fill up the numbers in favour of the tenant in possession; or

if he declines to fill up his lease or copy, and to pay the proper fine, then *J. B.* may make a reversionary grant to another for the term of one life, or of two lives (if so many shall chance to have dropped out of the subsisting grant) provided the whole number on the present and reversionary grants does not exceed three.

December 31, 1766.

C. Yorke.

C A S E.

A. a merchant, exports sundry goods, whereon he is entitled to a drawback of the duties paid on the importation of the said goods.

B. a clerk in the custom-house, is employed by *A.* to procure and pass through the several offices the instrument (called a debenture) by which the amount of the drawback is to be obtained.

The acts, on the part of the merchant, respecting this instrument, are, his oath as to the real exportation of the goods, and his indorsement by way of acquittance, or receipt.

B. advanced money to *A.* having at the time several of these debentures in his hands unperfected, though not expressly on the security of the debentures, and for the sum due took *A.*'s cash draught upon his banker, dated 14th January, 1767, instead of the 4th February, 1767, the day on which the transaction happened.

B. in the course of business, paid this draught away on the day he received it, without indorsement to *C.* who unluckily omitted to tender it to the banker for four or five days, and until *A.* had drawn all his cash from thence, so that, on refusal of payment, he brought it back to *B.* and in the intermediate time *A.* became a bankrupt.

Query. Can *B.* compel the assignees under the commission to indorse the said debentures when otherwise perfected, so that *B.* may receive the money in discharge of the debt due to him, the bankrupt being willing to make oath to the exportation, or can the assignees compel *B.* to deliver up the debentures to them, and must *B.* come in under the commission for his demand?

Opinion. If it is usual, as I am informed it is, for the clerks of the custom-house to advance money to merchants upon the security of debentures, whilst they are passing through the offices, and before they are perfected, I think the debenture will be a security to *B.* for the money advanced; the omission of four or five days in not carrying the draught to the banker, is of no importance, as it makes no alteration in the bankrupt's estate; if there is any surplus from the debenture after *B.* is paid, I presume the assignees, if necessary, will assist in receiving the money; if the drawback cannot be received without the assignees, and they refuse their assistance, *B.* must apply by petition to the Chancellor in the matter of *A.* the bankrupt, with an affidavit of the money lent

lent upon the debenture, according to the custom and usage of the clerks who pass them through the offices ; and I imagine that the Lord Chancellor will direct the assignees to join in doing what is necessary for receiving the drawback, by indorsing it, or otherwise. If *B.* can receive the money without the assignees, it would be better to do so, paying them the surplus ; and I do not think that the assignees can compel *B.* to deliver up the debenture, and leave him to come in under the commission for his demand.

February 13, 1767.

C. Sayer.

C A S E.

3d February, 1748. *B.* Y settlement on the marriage of *A. B.* with *C. D.* his wife, the estates of *A. B.* were conveyed to trustees in fee, and their heirs (*inter alia*) after the decease of *A. B.*

" To the use and intent that the said *C. D.* might, during her life, receive an annuity or yearly rent-charge of 600*l.* payable quarterly by equal portions, at *Lady-day*, *Midsummer*, *Michaelmas*, and *Christmas* ; the first payment to begin and be made on such of the said quarter days as should first happen after the decease of the said *A. B.* in bar of dower, with power of distress on non-payment for forty days."

And then a term was raised for securing such annuity.

A. B. died 17th *November*, 1752, and one quarter's annuity was paid to, or retained by *C. D.*, as due at *Christmas* 1752, O. S. and the annuity was cleared to *Christmas* 1766, O. S.

C. D. died 20th *June*, 1766, having made a will, and appointed executors.

Query. To what time are the executors of *C. D.* entitled at law, or in equity, to the quarterly payment of the said annuity, and is this case within the statute of 11th *Geo. 2.* cap. 19. sect. 15?

Opinion. The executors are entitled to the payment which became due at *Lady-day* 1766, but not to any apportionment of the succeeding quarter. This case does not come within the 11th *Geo. 2.*

April 2, 1767.

Wm. De Grey.

C A S E.

THE father of the parties died intestate about six years ago, leaving a widow, three sons, and a daughter, and was at the time of his death indebted to one Mr. *L.* a considerable sum for rent, to the amount of near all the intestate's effects.

The

The widow administered to her late husband's effects, and accordingly possessed the same, and continued in possession of Mr. L.'s estate without settling and paying the debts due from the intestate to Mr. L. (he being a friend to the widow, and not calling it in) and using the goods of the intestate, such as live stock and utensils in husbandry, to the time of her death, without taking any inventory thereof, or making any or very little change in the live stock.

About half a year ago the widow died, having first made her will, and thereof appointed the defendant, one of her sons, executor, who, by virtue thereof, possessed himself of the aforesaid stock and utensils, and is in possession of the farm, (with the consent of Mr. L.) but one of the other sons has obtained letters of administration to his father, un-administered by his mother, and thereupon commenced this action in trover.

Query. Can it, after this length of time, be considered, that the live stock now remains un-administered; for, are not representatives chargeable, within a reasonable time after the death of intestates, with the value of the effects come to their hands, whether sold or kept for their own use, and the property by such means changed; but if you think this action can be supported, may Mr. L. now seize by a distress the cattle in question, for the arrears of rent due to him at the intestate's death, such cattle being on his farm, and to whom must notice be given?

Opinion. I am of opinion, unless a representative pays, in a course of administration, the value of the effects, that such effects remain as the goods of the intestate or testator, and the same remaining in specie at the death of such representative, the succeeding representative will have a right to them at law; and therefore I conceive that the present action is maintainable. Mr. L. may undoubtedly seize any goods upon the farm for the rent due under a subsisting lease, but not upon an expired one, unless under the statute of Queen *Ann*, within six months, and during the tenant's possession, and landlord's title; but I do not see that a distress now to be taken can in any respect avail the defendant; if the defendant chuses nevertheless to try the cause, he must plead the general issue.

Middle Temple, 25 February, 1767.

Ja. Wallace.

C A S E.

1st May, 1736. *C. R.* by his will directs, first, that all his debts and funeral expences be discharged, then he gives to his brothers *A. R.* and *C. R.* 40*l.* a piece, to be paid them in one month after his decease; he gives unto his sister *E. M.* 400*l.* to be paid her after the decease of his wife *E. R.* and in case his sister dies before his wife, then the said 400*l.* was to be equally divided among his said sister's children, then living; he gives unto his cousin *J. C.* a minor, 10*l.* to put him out apprentice, and 90*l.* more at the death of his wife; and in case she dies before he is out of his apprenticeship, the money to be put out for his use; he gives to his sister *M. R.* 10*l.* to be paid immediately after his death, and 90*l.* more at the death of his wife; unto his servant *T. M.* he gives his liberty, and 20*l.* in money, with all his wearing apparel, to be paid in one year after his decease; he gives, devises, and bequeaths to his wife *E. R.* all the remainder of his estate real or personal, money, plate, jewels, bills, bonds, household goods, or any other effects belonging to him, to dispose of the same as she should think proper; and appointed her and his brother-in-law *Dr. S. W.* and *T. P.* executors.

1st November, 1737. The said *C. R.* by a codicil reciting, that since making his will, he had placed out *J. C.* apprentice, he therefore revokes the legacy of 10*l.* and also 10*l.* part of the 90*l.* given him by the said will, and also reciting, that since the said will he had purchased a real estate, part freehold, and part copyhold, he thereby devises the same to his wife and her heirs, and in all things else he confirms his will: the codicil was executed, in the presence of three witnesses, and the copyhold surrendered to the use of his will.

The testator before his death contracted with workmen to repair his real estate.

The testator's personal estate, save the sum of 400*l.* and save what he laid out in the purchase mentioned in the codicil, consists in shares of ships, and debts due from persons beyond the seas, and the above sum of 400*l.* will little more than pay the said workmen's bills, and his other debts, and the legacies directed to be paid in his widow's life-time, and his funeral expences; now as to the legacies that are to be paid after her death, the legatees insist, that the widow and executrix ought either to lodge a sufficient sum to answer their legacies in some public fund, or give security that the same shall be paid according to the will. Therefore,

Query. Will a court of equity oblige the widow so to do, especially as his debts abroad are very precarious, and may never be got in; and in case of a deficiency, will the real estate be liable to make up such deficiency?

Opinion. I conceive, that a court of equity will not in this case compel the executrix to give security for the payment of the said legacies,

legacies, or to lodge a sufficient sum in the public funds, for that purpose, unless it can be proved, that she has misbehaved herself, or is in danger of becoming insolvent.

25th April, 1738.

T. Barnardiston.

C A S E.

J. J. Esq; deceased, made a will, or testamentary writing, in the following words, *viz.*

I J. J. of Dallington, do hereby declare, that I have myself destroyed all wills by me formerly made, and that this is my last and only will, by which I leave my dear and loving wife, all my personal estate whatsoever, which I shall die possessed of, and all my arrears of rent, and appoint her sole guardian of the child of which she is now pregnant. Given under my hand, this 20th day of November, 1749.

J. J.

Note. The whole of the foregoing testamentary bequest is wrote with his own hand.

The said Mr. J. intending to go abroad for the recovery of his health, and being minded to settle his affairs, did, upon the 10th of November inst. partly by word of mouth, and partly in writing, give directions to his attorney to draw his will.

By the settlement made on his marriage with Lady A. J. his estate at Dallington is settled (among other uses) to the use of the first son of the body of the said Lady A. in tail-mail, remainder to the second, third, fourth, and all other sons in tail mail, remainder to himself, his heirs and assigns for ever, with power to raise money for younger childrens portions, whether sons or daughters.

The said Mr. J. having no son living, and only one daughter, and being minded to settle his estate at Dallington on such daughter, on failure of issue-mail, and to make other dispositions of his estate, wrote instructions in the following words and figures, *viz.*

In trust to F. Lord G. and G. D. Earl of H. for the benefit of my daughter A. and if any other daughter be living at my death, to pay her 10,000*l.* when she shall arrive at eighteen, or marriage with the consent of her mother and guardian; but the 400*l.* settled on younger children to be part of the 10,000*l.* and to go all to such second daughter, and the land to be settled on that condition; 500*l.* a piece to the brother and sister, the furniture of Dallington house and out-houses, to go as heir-looms to whoever has the right to the mansion-house; the rest of my personal estate to go to my wife; but if I leave a son, then the rest of my personal estate to go to my daughter or daughters, over and above what is settled after payment of debts and funerals; and if any child of my body should not attain twenty-one, then their share of my personal estate to go to their other sisters, except the eldest,

if more than one, otherwise to my wife; the land to go to my eldest daughter, and heirs-male of her body, taking the name of *J.* and so on failure to the heirs-male of the second and third; and in failure of heirs-male of all the daughters, then to my brother —, and his heirs-male; and in failure thereof to my brother —, and his heirs-male; and in failure to my brother —, and his heirs for ever; the use of the house, and gardens, and appurtenances, to my wife as long as she remains sole; and the use of the fish ponds, and guardianship of my son or daughter to be in my wife; but subject to the directions of the trustees, who shall make such allowance for maintenance as they shall think proper; and appointed his wife and his brother *B.* executors; but, they being executors, are not to cancel any debt due to me.

Note The foregoing instructions are not dated or signed; but it is certain they are all of the hand-writing of the said *J.* and were wrote upon the 10th of November inst. in the presence of his attorney, as part of the instructions for his will, which was afterwards drawn; but Mr. *J.* did not live to execute it; and never saw the will as drawn by the attorney.

Query. Which of the foregoing writings will (with regard to the personal estate) be pronounced as the last will and testament of the said deceased; if the first should be pronounced to be so, will it not be proper and advisable for Lady *A. J.* (as no executors are named therein) to take out administration with that will, or testamentary schedule annexed; and if the last shall be pronounced as his last will, will it not be proper for her Ladyship, and the deceased's brother *B.* (if he thinks fit) to obtain a probate of the same?

Opinion. The instructions given to the attorney on the 10th of November, being all of the hand-writing of the deceased, will, in my opinion, be pronounced as the last will, and as such operate with regard to the personal estate, provided that the deceased did not between the 10th November and the time of his death, express any dislike of such disposition, or declare he intended any alteration; but from the general tenure of his behaviour appeared to be satisfied with what he had ordered, and would have executed it, had he not been prevented by death.

I am of opinion Lady *A. J.* and the brother *B.* are entitled to a probate; but it will be necessary to have an affidavit of two persons, that such paper is Mr. *J.*'s hand-writing. I think it will also be adviseable for the attorney to make an affidavit as to all circumstances that arose on the 10th November relating to this paper, and, whether he saw the deceased after that time, or received any further directions from him.

If the last writing should be pronounced for,

Query. How far will the direction given, that the furniture of Dallington house and out-houses, shall go as *heir-looms* to whoever has the right to the mansion-house, as it tends in some measure to realize a part of his personal estate; and likewise the other direction, that his Lady should have the use of his house and gardens, and fish ponds, so long as she remains sole, extend?

Opinion. The furniture of the house and out-houses of Dallington, being part of the personal estate, the directions given, that they shall go as *heir-looms* to whoever has a right to the house, I am of opinion, are valid by this paper of the 10th November.

But the direction given, that his wife should have the use of the house, &c. as long as she remains sole, is a conditional devise of part of the real estate from the heir at law, and cannot, I apprehend, pass by this unexecuted paper.

Query. On the whole, your advice is desired, in what manner Lady A. J. shall act under the present circumstances?

Opinion. The affidavits mentioned in the answer to the first query, are, I think, sufficient to obtain a probate of the instructions of the 10th November in common form.

But as the executors must at that time swear they believe that to be the last will, if they have any doubts as to that part, I would then advise them to institute, in an amicable manner, a cause in the *prerogative court*, to bring both papers before the judge, and take his opinion which shall be deemed the last will.

Doctors Commons, Nov. 21, 1752.

Charles Pinfold.

C A S E.

J. Esq; deceased, partly in writing, but in great hurry, gave directions to his attorney to draw his will; but, being taken ill the same evening, never asked to see the will, or shewed any desire to see it, and was perfectly in his senses during his illness, till within two hours of his death.

Agreeable to the instructions, a will was afterwards drawn, which Mr. J. did not live to execute, or ever saw the draft as drawn by his attorney.

Query. Which of the two writings, as stated in the foregoing case, will be deemed his will?

Opinion. I am of opinion, that the first will, as to the personal estate, is not revoked by the instructions of the 10th of November last, which I consider as incomplete, and in the nature of a preparation

preparation towards making a new will. It will be proper for Lady A. to take out administration, with the will annexed; but she must disclose and produce both writings.

If the last writing shall be pronounced for,

Query. How far will the direction &c. as to her remaining sole, extend?

Opinion. In the case put, the bequest of the furniture might be good to the daughter, who would be entitled as heir to the mansion-house; but the devise of the house, garden, and fish ponds, would be void, the will not being properly attested.

Query. As there is no issue-male of the marriage, and the daughter is heir of her father, and an infant of very tender years, what will be advisable to be done on her behalf, with regard to the real estate?

Opinion. It is most advisable to put the estate and infant under the care of the court of *Chancery*, and to have a receiver appointed.

Query. Will not Lady A. J. have a right to the guardianship of her daughter during her infancy, and the care of her education and maintenance; and can she by will, in case of her death before her daughter shall attain her age of twenty-one years, appoint any person she shall think proper to be her guardian during her infancy?

Opinion. She has no absolute right to the guardianship, the will by which it is given not being properly attested; but the court of *Chancery* will certainly appoint her guardian; she cannot leave it by her will, though her recommendation might have weight with the court.

Mr. J. deceased was one of the residuary devisees of Sir J. J. whose real estates have been lately sold before a master, pursuant to a decree of the court of *Chancery*. The several purchasers have been absolutely confirmed, and some of them have paid their purchase-money into the Bank, and are to have the rents and profits from Lady-day last, but none of the conveyances have been executed.

Query. Will Mr. J. J.'s share of the money paid into the Bank, as well as what remains in the purchasers hands, who are absolutely confirmed purchasers, be deemed a part of his personal estate?

Opinion. I am of opinion, that Mr. J. J.'s share of the purchase-money, will be deemed part of his personal estate.

Query.

Query. On the whole, your advice is desired, in what manner Lady A. J. shall act under her present circumstances?

Opinion. Lady A. under both writings, is absolutely entitled to the bulk of the personal estate. She should produce both; and I think the court will grant administration with the first annexed. The real estate is affected by neither writing, and descends to the infant daughter. I think a bill should be filed in Chancery on her behalf, for the usual directions to take care of her person and estate during her minority.

December 4, 1752.

W. Murray.

C A S E.

C. G. Esq; by his last will and testament, duly executed and attested, devises his estate in *hæc verba*.

I give and devise all and singular my manors, advowsons, mesuages, lands, tenements, and hereditaments whatsoever, in W. in the county of E. or elsewhere, with their and every of their rights, members, and appurtenances, and all other my real estates, whatsoever and wheresoever, unto my daughter M. wife of J. S. Esq; and to her heirs and assigns for ever, in the first place to pay and apply the rents, issues, and profits of my said real estate, towards payment, and in discharge of such of my debts and legacies in this my will or any codicil thereto, I shall hereafter make and execute as my personal estate, (which I direct shall be thereto first applied) shall not extend to, or be sufficient to pay and discharge; and from and after satisfying all my said debts, legacies, and funerals, then to and for the sole use, benefit, and behoof of my said daughter, her heirs and assigns for ever; subject nevertheless to, and chargeable with such contingent payments and conditions as are herein after also mentioned; and I will and declare, that my said estate and effects shall not be subject to, or liable to the debts, controul, or engagements of the present or any other husband my said daughter shall happen to marry, and that her separate receipt or release from time to time, whether sole or married, shall be a sufficient discharge to the tenants and occupiers of my said real estates, as well as to all other persons I have any demand on or account with whatsoever: provided if my said daughter shall have an eldest son who shall attain the age of twelve years, or any other son who shall become an eldest son, and shall attain that age, then my will and mind is, that such son shall by and out of the rents and profits of my said real estates have, receive, and be entitled to an annuity, and clear yearly sum of 60 l. of lawful money &c. payable quarterly, free from all deductions whatsoever, to be retained, paid, and received, by his father, mother, or other person, who shall have the care and charge of him, and to be expended and applied towards his maintenance and education, until such son shall attain his age of sixteen years, when the said annuity shall cease and determine;

determine; and from and after the time such son shall attain his said age of sixteen years, such son shall then and from thenceforth have, receive, and be entitled to receive one annuity, or clear yearly sum of 80*l.* of like money, payable quarterly, clear of all deductions, to be retained, paid, received, expended, and applied for the purposes aforesaid, until such son shall attain his age of nineteen years, when the said annuity shall cease and determine; and from and after the time such son shall attain his age of nineteen years, then my will and mind is, that such son shall have, receive, and be entitled to have and receive, out of the rents and profits of my said real estates, for the purposes aforesaid, one annuity of 140*l.* clear of all deductions, until he attains to the age of 21 years; and from thenceforth the said annuity of 140*l.* shall cease; and then my will and mind is, that such son so attaining his age of twenty-one years, shall take, receive, and be paid the full sum of 200*l.* of lawful money, clear of all deductions, payable to such son quarterly, during the natural lives of his father and mother, and the life of the survivor of them; and in case of any default in payment of any of the said annuities, or any of the said quarterly payments, as they shall respectively become due and payable, or within forty days next after, I do hereby devise, direct, and give full power and authority unto my brother-in-law *J.C.* and his heirs, to enter upon any part of my said real estates so charged with the payment thereof, and to seize and distrain for the same; and all costs and charges that shall be occasioned or incurred by non-payment thereof, and their own reasonable expences distractur therein, and to see the same applied pursuant to the directions of this my will; and in case my said daughter shall depart this life in the life-time of the said *J.S.* her said present husband, then and subject to the payments of such of my said debts, legacies, annuities, and funerals, that shall happen to remain unpaid, if such there are, as my inclination has been known to my said daughter, I hope she will have no objection to give my said real estates, and every part thereof, with the appurtenances unto the said *J.S.* her said husband, for and during the term of his natural life, unless some extraordinary occasion shall arise and give reason to the contrary; and likewise subject to the further and future charges and incumbrances herein after, or by any codicil as aforesaid, to be by me duly made, shall be mentioned; and from and after the several deceases of my said daughter, and her said present husband, and of the survivor of them, in case by the terms and limitations of the settlement made on their marriage, and to which I am a party, it shall be necessary to raise the sum of 8000*l.* as a provision for the children and issue of the said marriage, as in the said settlement is mentioned, then I do hereby charge my own real estates herein and hereby before given and devised, in manner aforesaid, with the payment of the sum of 2000*l.* of lawful money of *Great Britain*, in part of the said sum of 8000*l.* for the purpose in the said settlement mentioned, and in exoneration of the said settled estate, in favour of the eldest son of the said marriage, who by virtue of the said settlement shall become entitled to such settled estate,

estate, and *subject nevertheless* to the aforesaid charges, upon the contingency in this my will before, or any codicil hereto, or herein after mentioned; and I do hereby give full power and authority to my said daughter, notwithstanding her present or any after *coverture*, to grant leases of my said real estates, or any part thereof, for any term not exceeding twenty-one years in possession, and not in reversion, or for future interest, for the best improved rents, without taking any fine under the usual covenants, reservations, and agreements, as are usually made, or can be obtained, between landlords and tenants, such tenants executing counter-parts of such their leases; and I give unto my said daughter *M.* all my personal estate, and every part thereof whatsoever, after payment of my said debts, legacies, and funeral, in manner as herein before mentioned.

The testator soon after died without making any codicil.

M. S. hath never had any child, nor at present is there any likelihood of any, having been married ten years.

Query. Can the said *M. S.* alone, notwithstanding her *coverture*, sell and dispose of the said devised estates, or devise the same by her will to such uses as she shall think proper? And if she cannot, What step must she and her husband take to enable her to do?

Opinion. I conceive that *M. S.* being under *coverture*, cannot dispose of the devised estates, without levying a fine.

As a purchaser of a part of the said devised premises, now offered very advantageous terms,

Query. What method must be pursued to secure the purchaser from the annuities to an elder son, and, in case of more children, from the 2000*l.*?

Opinion. I think the whole residue of the estate not agreed to be sold, may be made a collateral security against the annuities & in case the same be sufficient for that purpose.

November 27th, 1766.

Wm. Rivet.

CAS

C A S E.

Sept. 30, **B**Y indenture of this date of three parts, between *J. C.* 1745. **G**ent. and *G.* his wife, of the first part, *G. G.* Gent. of the second part, and *A. D.* Gent. of the third part, *it was covenanted and agreed by and between the parties thereto, that the said J. C. and G. his wife, should and would, on or before the then next Michaelmas term, levy a fine upon acknowledgment of right, and so forth, with proclamations unto the said G. G. and his heirs, of a mes- suage and lands therein specified, which fine was thereby declared to be and enure to the use of the said G. G. and his heirs, to the intent that he might become a good tenant of the freehold, for perfecting a common recovery, therein covenanted and agreed to be suffered, which recovery, when suffered, was thereby declared to be and enure, as to all the premises, (except Little Field four acres, Great Field twenty acres, and a close of arable land adjoining to Great Field three acres.)*

To the use of the said J. C. for his life, sans waste.

To the use of G. his wife for her life.

To the use of such child or children of the said J. C. on the body of the said G. his wife, and for such estates as the said J. C. should by deed or will appoint; and for default of such appointment, or from or after the determination of any estate or estates, term or terms, so to be limited or appointed.

To the use of all and every the child or children of the said J. C. on the body of the said G. his wife, begotten, or to be begotten, if more than one such child, equally between them, share and share alike, as tenants in common, and not as joint tenants, and their respective heirs and assigns for ever.—Or if there should be only one such child,

To the use of such only child, and his or her heirs and assigns for ever.—If no such child,

To the use of the said J. C. his heirs and assigns for ever.

As to the several little fields &c. above excepted,

To the use of such person or persons, and for such estate or estates, term or terms, as he the said J. C. should, by deed or deeds in writing, or by his last will and testament in writing, duly executed and attested as aforesaid, direct, limit, or appoint; and for want of any such direction or appointment,

To the use of the said J. C. his heirs and assigns for ever.

Proviso empowering a revocation by C. and wife.

This deed was executed by all the parties.

The said *J. C.* and his said wife are both dead, leaving issue only one child; but the said *J. C.* survived her, and afterwards intermarried with Mrs. *M. S.* sister of the said *G.* his former wife, by whom he had no issue.—The said *J. C.* having charged the estate, reserved in his own power by the above deed with a considerable sum by way of mortgage, and wanting a further sum, which was rather more than was easily to be procured on those lands, prevailed on his then wife, the said *M.* to suffer a recovery of a close of ground called

Spring Close, she was seised in fee of, and join it in the mortgage, and to give up the equity of redemption to him the said *J. C.* and in consideration of his compliance with her request, by indentures of lease and release, dated the _____ day of _____, and made between the said *J. C.* and *M.* his wife, of the one part, and *H. M.* of the other part, in consideration that the said *M.* had mortgaged the said close of ground called *Spring Close*, for the debt of her said husband, and vested the equity of redemption in him, and for the affection he had for his said wife, and of five shillings to him paid by the said *H. M.* he the said *J. C.* did grant, release, and confirm unto the said *H. M.* and his heirs, a messuage and lands he purchased of one *P.* the said close called *Spring Close*, and the several closes of ground reserved in his own power, by the above deed of the 30th September, 1745, *To hold unto, and to the use of the said *H. M.* his heirs and assigns, upon the following trusts:*

*In trust for the sole and separate use of the said *M.* wife of the said *J. C.* for and during the term of her natural life, and from and after her decease.*

To such person or persons for such estate or estates, and for such uses, intents, and purposes as she the said *M. C.* notwithstanding her coverture by any deed or instrument in writing, or by her last will and testament in writing, duly executed in the presence of three or more credible witnesses, should limit, direct, or appoint; and in default of such appointment,

*To the use and behoof of the heirs of the body of the said *M. C.* and in default of such issue,*

*To the use and behoof of the said right heirs of the said *M. C.* for ever.*

In which said release are contained covenants, that the said grantor had good right to convey, and for quiet enjoyment, free from all incumbrances, (except only four several mortgages of the said premises made to *J. S. Gent.* for several sums, amounting in the whole to the sum of 600 l.

The said *J. C.* died intestate, indebted in other sums of money, some on bonds, and some on notes of hand, which his personal estate will be greatly insufficient to discharge.

The said *M. C.* (who had no issue by the said *J. C.*) has applied for the administration, and the *commons* have granted a commission, which was executed in the country, and returned; but before it was filed, and administration granted, a *caveat* was entered by the son of the said *J. C.* by his former wife, or by his next friend, he being under age.

Query 1a. Whether the last marriage is not valid, and the incest only punishable in the time of the said *J. C.* and if the said *M. C.* is not entitled to the administration, and if any personals had been distributable, whether she would not have been entitled to a third?

Query 2d. The bond debts, exclusive of the mortgages, will exhaust the personals, and if the personals are appointed in discharge of

of those debts, will not a court of equity charge the lands with the *simple contract* debts, as far as the chattels have been applied in discharge of the bond debt?

Query 3d. Be the marriage valid or not, whether the said *M. C.* is not entitled in *fee* under the last settlement, *subject* only to the mortgage debts, which, it is presumed, she must have paid out of the estate, if the chattels had been sufficient to discharge this, and all other the said *M. C.*'s debts, and if the estate limited by the first settlement, and not the last, is not liable to make good the deficiency, though the said *M. C.* knew of the first settlement, it being merely voluntary, and the last, on consideration of her giving up *Spring Close*, which it is presumed is a valuable consideration?

Query 4th. The said *M.* is in possession of part of the estate in the first settlement, limited to the child of the first marriage, and the tenants would attorn for the other part, if that is the estate out of which the overplus of the debts must be paid; would it not be advisable for her to keep possession, and to get the tenants to attorn and apply the rents in aid of the chattels for the benefit of the creditors as above, particularly if she procures administration, or if she contests the *caveat* with success, will she not be entitled to retain the expence of it out of the said personal estate, before she is compellable to apply it even for the benefit of the creditors, and how will it be most advisable for her to act?

Opinion. I am of opinion, that the last marriage, being not impeached during the *coverture*, cannot be considered as a valid marriage, and that under the statute of distributions, the second wife will be entitled to the thirds of the personal estate. By the statute 21 *H. 8. c. 5. s. 3.* the ordinary may grant administration to the widow, or to the next of kin, at his discretion; and therefore though he should in this case grant the administration to the son of the first *ventre*, I think no *prohibition* would be granted, and on a return to a *mandamus*, he would only alledge the exercise of such discretionary power, as between the wife and the son of the intestate, with respect to his granting the administration to either. Supposing the lands liable to the demands of the bond creditors, the court will certainly so marshal the assets, that in case the bond creditors are satisfied out of the personal estate, the simple contract creditors will, *pro tanto*, stand in their place. As to the validity of the first settlement, and whether it is to be considered as merely voluntary or not, it is material that it should be stated what interest the first wife had in the estate of which the recovery was suffered; for if it was the wife's estate, there was certainly a consideration moving from her for entering into that settlement, and therefore it cannot be considered as voluntary against her issue. It is also not stated, whe-

ther *J. C.* the husband was at the time of making such settlement greatly indebted or not, which may make a difference as to the bond creditors, if their debts were contracted several years afterwards. As to the settlement made on the second wife after marriage, it seems to have been made on a good consideration and therefore not liable to the demands of bond creditors; but the value of *Spring Close* and the other premises is not stated, from which only a judgment can be formed, whether the said settlement was collusive or not. I cannot advise the second wife to accept of an attorneyment of the estate limited by the first settlement, till I know whether the same is liable or not to the demands of the intestate's bond creditors. The expences of administration (if obtained) must be in the first place paid out of the intestate's personal estate, before the administratrix is compellable to apply it over for the benefit of the creditors.

February 17, 1767.

E. W.

The first wife had no other interest in the said estate comprised in the first settlement than her dower, which it is presumed will not amount to any consideration in favour of her issue.

The debts which the intestate owed, at the time of his first marriage, were inconsiderable, and perhaps will with difficulty be shewn, if at all; however, he did soon afterwards contract very considerable debts; but the majority, in order to purchase the estate included in the second settlement; the whole, unless two or three bond debts of about 100*l.* lately contracted, are comprised in the mortgage excepted in the second settlement.

The premises in the second settlement, without *Spring Close*, may be worth 200*l.* more than the 600*l.* due on them, and *Spring Close* is worth about 200*l.* more, so that it is presumed a valuable consideration, as the 600*l.* are apprehended to be a charge on the second settled estate, and not the first.

The ordinary granted a commission to swear Mrs. *C.* the administratrix, and she was sworn, and security given as required, and the commission returned; but before the administration was sealed, a *caveat* was entered, for which reason it remains in suspense.

Opinion. The settlement made on the first wife, dated 30th September, 1745, appears to be a voluntary one with respect to the issue, as her giving up her dower is no consideration; for under that settlement she takes an estate for life after her husband's death in the whole premises instead of her thirds. Considering the first settlement as merely voluntary, it will not effect the second wife, tho' she had notice of it, as she is a purchaser for a valuable consideration, under the deed of 24th January 1761. As to the question how far the bond creditors have a right to come upon the premises comprised in the first settlement, it is a matter of some nicety.

and will depend on circumstances. It has been said, that in the statute of 13 *Eliz.* c. 5. it is necessary to prove that the person conveying was indebted at the time or soon after the execution of the deed; for the recital of the statute takes notice only of conveyances made to the end, purpose, and intent to delay, hinder, or defraud creditors; and the *enacting part*, with a reference to the preamble, declares only such deeds to be void as are made to the intent and purpose before declared and expressed. Now Mr. C. does not appear to have been much indebted at the time of making the settlement of 1745, and therefore it can scarcely be said, that that settlement was made with a view to defraud subsequent creditors; but on this part of the case, without being fully acquainted with all the circumstances, I cannot undertake to give any positive opinion.

E. W.

C A S E.

IN the name of God, amen, I E. G. of *Shepton Mallet*, in the county of *Somerset*, stocking-maker, being firm of body, and of perfect memory, do ordain and make this my last will and testament, this 17th day of *February*, 1723, revoking all former wills and testaments ever before by me made or declared, *viz.* and first, I command my soul into the hands of the Almighty God, my Creator, and Jesus Christ my Redeemer, and my worldly estate as followeth: *And whereas* I am seized in fee-simple of a messuage or tenement called *Wookey's* tenement, in the parish aforesaid, which tenement I give and bequeath unto my sister *E.* for her natural life, paying unto my heirs hereafter mentioned the yearly rent of *five shillings*; and I give unto my sister *K. P.* *ten shillings*; *Item*, I give all my goods and chattels unto my brother *R.*'s children, then living, equally to be divided betwixt them; *Item*, all my lands I am now possessed of in *Shepton Mallet*, I give, devise, and bequeath, unto my nephew *S. G.* whom I make whole and sole executor of this my last will and testament.

The messuage called *Wookey's*, devised to the testator's sister *E.* is a small part of his estate, and the other part consists of lands which *E.* G. the heir at law of the testator claims, insisting on *S.*'s interest to be only an estate for life; some part of the lands belong to the messuage called *Wookeys*, and the other part is a distinct property.

Query. To whom does each belong, *S.* being dead, whether to his heir at law, or to the testator's sister?

Opinion. I am of opinion, that *S.* took the lands in *Shepton Mallet* in fee-simple, with the reversion in fee of *Wookey's* tenement, expectant on *E.*'s estate for life; the *five shillings* rent is directed to be paid by *E.* to *S.* as the heir aforesaid. This shews, that he meant the inheritance to *S.* and his heirs; he is also made whole and sole executor.

August 12, 1767.

C. Yorke.
C A S E.

C A S E.

J. S. by his will dated 13th February, 1751, devised, *int. al.* 12 follows:

Imprimis, I do give unto my nephew H. L. all the land I purchased at Eastower, of farmer E. W. and J. G. of Stalbridge, and now of Henstridge. *Item*, I give unto H. L. the house and orchard in Eastower, formerly called Hines, and a close called Pittclose. *Item*, I give unto H. L. all the lands of R. M. of Eastower, which I have now a mortgage upon; and if the mortgage was not paid off in three years, the said R. M. was to give me a true title to his lands, which time will be expired at Lady-day next; but in case the above H. L. should die without issue, then to my brother M. S. and his heirs for ever.

And in a subsequent part of the will, is likewise the following bequest:

Item, I give unto my cousin F. L. 200*l.* to be paid out of my lands of Eastower, by her brother H. L. one year after my decease.

The testator died in a few days after making his will, whereupon H. L. the devisee, entered on all the said estates devised to him aforesaid, (which are of the yearly value of about 60*l.*) and held and enjoyed the same till his death, which happened in February 1761, (except the estate called Maidman, which he, about four or five years ago, delivered up to Maidman the mortgagor, who is now in possession thereof, and took his bond, or some other security, for the money due for principal and interest thereon), and (it is presumed) paid, or secured to be paid, the said legacy of 200*l.* to the said F. L. as above mentioned.

The said M. S. died in L.'s life-time, leaving issue a son, who is heir at law.

No recovery was suffered by L. to dock the entail, in case he had such estate.

Query. What estate did the said H. L. take by the said devise?

Whether an estate in *fee*, by its being charged with the payment of the 200*l.* legacy to the said F. L. or an *estate-tail* (by the words in the will, "but in case the above H. L. should die without issue, then &c. or an estate for life only? If he took an estate-tail, or for life, who is now entitled to the *fee*, he (L.) being dead? Does it belong to the heir at law of M. S. (he being likewise dead) by the words in the will, ("but in case the above H. L. should die without issue, then to my brother M. and his heirs for ever?") Or does it revert to the heir at law of the testator

testator *J. J.* (no recovery having been suffered to dock the entail by *L.*) in case he had such estate as before mentioned?

Opinion. I am of opinion, that *H. L.* took an *estate-tail* (subject to the charge of 200*l.*) and he having died without issue, and without suffering a recovery, and *M. S.* also having died in the testator's life, so as that the devise of the remainder in *fee* never vested in him, the heir at law of the testator is entitled to the lands.

Query. Who is now entitled to the money due on the securities given by *Maidman* to *L.* in lieu of the money due to the testator *J. S.* on mortgage of *Maidman's* estate, at his death as before-mentioned.

Opinion. I think that *H. L.*'s representatives are entitled to the money paid or secured by *Maidman*, in order to redeem the estate in mortgage.—If these lands had been absolutely *foreclosed*, they would have been subject to the *entail* in the will; but as the *mortgagor* has redeemed, *L.* is entitled to the money.

August 12, 1767.

C. York.

C A S E.

August 17, *R. B.* by his will of this date, gave, devised, and bequeathed, to *T. A.* and *J. B.* and their heirs, an annuity of 6*l.* during the life of *H. S.* his daughter, the wife of *J. H.* for separate use, to be paid by quarterly payments as therein specified by his executor therein named, out of his real and personal estate, which should or might come to his hands at the testator's decease, and the testator gave, devised, and bequeathed, to *D. H.* his grand-daughter, from and after the death of the said *S. H.* the yearly sum of 5*l.* for her life, to be paid by his executor, under such directions, limitations, and by such payments as were therein before mentioned; the first payment to commence on such of the *feast days* as should next happen after the decease of the said *S. H.* and of this his said will appointed his son *R. B.* sole executor and residuary devisee and legatee, who by his will dated the _____ day of _____, gave and devised unto the said *D. H.* spinster, his messuage or dwelling-house, garden, orchard, and two closes of ground thereunto belonging, with the appurtenances, situate, lying, and being at *Lovington*, the county aforesaid, and his close of ground called *Standbrook*, with the appurtenances, lying at *Galbampton*, within the parish of *Worth Cadbury*, *To hold to her, her heirs and assigns for ever;* and gave and devised unto the said *D. H.* his four closes of ground called *Cocking Mill* and *Cocking Marsh*, with the appurtenances, lying and being in *Castle Cary*, *To hold to her, her heirs and assigns for ever,* subject to the payment of 6*l. per annum* to the said *S. H.* widow, for her

her life, pursuant to the above will, and appointed the said *S. H.* sole executrix and residuary devisee and legatee, who is since dead, leaving a will, but nothing to *D.*

D. is now married to one Mr. *H.* who claims the annuity of 5*l.* out of the real estate, devised by the last will to *S. H.* it being part of the estate charged with it by the first will; but the estates devised to *D.* in the last will being the other part, though of less value than these given to *S.* as the income of them exceeds the annuity.

Query. Is, or is not, the real or personal estate devised or bequeathed to *S.* liable to the payment of the 5*l.* annuity, or any, or what proportion of it, or will the devise to *D.* of part of the estate charged with it, as the income of the lands devised to her exceeds the annuity, be considered a satisfaction for, and destroy the annuity, or how is it to be raised?

Opinion. I am of opinion, that the real or personal estate given and devised by the will of *R. B.* to *S. H.* is not liable to the payment of any part of the annuity of 5*l.* given by the will of *R. B.* the father, to *D.* but that the beneficial devises to *D.* by the will of *R. B.* the son, will, and ought to be considered in equity, as a satisfaction of the said annuity of 5*l.*

October 5, 1767.

R. Perryn.

C A S E.

A. B. who died intestate, suffered a recovery of his whole estate in 1708, and by marriage settlement, dated in 1714, excepts out of the said settlement all that the lordship or manor of *C.* in the county of *D.* with all the rights and appurtenances thereof, together with the free warren; and also a moiety of the said hundred of *C.* in the said county of *D.* with the appurtenances; and also the free chappel, or chauncry of *E.* therein before-mentioned; and also except all those two messuages or tenements in *F.* and *G.* in the said settlement mentioned; and also two other messuages or tenements in *H.* and *J.* in the said settlement mentioned, or one of them, one whereof is called St. *R.* and now or late in the occupation of *L.* and the other now or late in the occupation of *M.*

Query. Whether by the words of the last mentioned exceptions, any land can, or do pass with the said last four messuages or tenements, though the tenants do hold lands with them?

Opinion. I think the lands usually held with the messuages, are part of the tenements excepted.

May 30, 1747.

Dudley Ryder.

C A S E.

C A S E.

June 11 and 12, 1722. **B**Y settlement on the intended marriage of *T. F.* and *S. B.* and which afterwards took effect, the freehold estates of the said *T. F.* in *Nottingham* and *Bechley*, and the freehold estates of the said *S.* in *Nervenden* and *Wartbing* were conveyed to trustees in manner following, *viz.*

To the use of the grantors, as to their respective estates, and to their heirs and assigns till the marriage should take effect, and from the solemnizing thereof, then as to all the premises.

*To the use of the said *T. F.* and the said *S.* for their natural lives, and the life of the longest liver of them.*

*Remainder to the use of the heirs of the body of the said *T. F.* by the said *S.* and for want of such issue, then as to the estates in *Nottingham* and *Bechley*.*

*To the use of the said *T. F.* his heirs and assigns for ever; and as to the estates in *Nervenden* and *Wartbing*,*

*To the use of the heirs of the body of the said *S.* by any other husband; and for want of such issue,*

*To the use of the said *T. F.* his heirs and assigns for ever.*

*And the said *T. F.* for the better maintenance of the said *S.* in case she should survive him, and for the better provision and maintenance of their children, *Covenants to surrender, within twelve months after the marriage, certain copyhold estates,**

*To the use of the said *T. F.* and the said *S.* for their natural lives, and the life of the longest liver of them;*

*Remainder to the use of the heirs of the body of the said *T. F.* by the said *S.* and for want of such issue,*

*To the use of the right heirs of the said *T. F.* for ever.*

*By indorsement made before execution of the settlement, it was agreed, that the copyhold should be surrendered after the death of the said *T. F.* and the said *S.**

*To the use of such child or children of the marriage as the said *T. F.* should by deed appoint; and for want of appointment,*

Then to the use of the first son of the marriage; and for want of such issue,

*Then to such uses as directed by the settlement, after the decease of the said *T. F.* and *S.* his wife.*

And it was further agreed, that the settlement should be in bar of dower.

The copyhold was surrendered accordingly, and Mr. *T. F.* has not made any express appointment.

April 20, 1725, By indenture to lead the uses of a fine and recovery of the lands in *Nervenden*, those estates are settled,

*To the use of the said *T. F.* and *S.* and the longest liver.*

*Remainder to such persons and estates as they, during their joint lives, or the said *T. F.* only, after the decease of the said *S.* should by deed or writing appoint; and for want of such appointment,*

To the use of the first son of the said marriage.

Remainder to the heirs of the said T. F. on the body of the said S.

Remainder to the heirs of the body of the said S.

Remainder to the right heirs of the said T. F. for ever.

January 29, 1733, By indenture reciting the settlement of the 20th April, 1725, the estate of Nervenden is settled

To the use of the said T. F. and S. for life, and the life of the longest liver,

Remainder to such child or children of the marriage, and for such estate, and subject to such charges as the said T. F. should by will appoint; and for want of such appointment,

Subject to the uses of the deed of the 20th April, 1725.

October — 1736, By indenture and fine, the estates in Nottingham and Bechley are conveyed

To such uses as the said T. F. should by will appoint; and for want of such appointment,

To the use of the said T. F. and S. his wife, for their lives, and the life of the longest liver;

And after their deceasess,

To the use of the right heirs of the said T. F. for ever.

Mr. T. F. is dead, leaving the said S. his widow, one son and four daughters.

September 3, 1765, The said T. F. by his will, executed in the presence of three witnesses, gave

To the poor of Nottingham 5 l.

To S. his wife 100 l. payable in three months:

Also to his wife, over and above his farm lands in Nervenden, which he desires she may have and enjoy during her life, an annuity of 300 l. payable half yearly, without deduction, and he binds and charges his messuages in Nottingham and Bechley with payment thereof; provided that what he had so given his wife, together with his farm lands in Nervenden, should be taken by her in full of all other claim and demand out of his estate by settlement, or otherwise, and that she should accordingly release all other right, pretence, or claim to his estates, or any part thereof, within six months after his decease, or otherwise she should not take any benefit under his will.

He gives to his daughters M. wife of W. L. and E. wife of J. J. 500 l. a-piece for their respective use, and not to be subject to the husbands; viz. 300 l. a-piece, to be paid within twelve months after his decease, and the remaining 200 l. a-piece within twelve months after the death of his wife. In case of the death of either daughter before her legacy becomes payable, the legacy to be paid to the children of such daughter at the age of twenty-one.

He gives to his daughters M. and A. 1000 l. a-piece, viz. 800 to be paid within twelve months after his decease, and 200 l. within twelve months after the death of his wife.

He gives some other small pecuniary and specific legacies.

And all the rest and residue of his real and personal estate (after his just debts, legacies, funeral expences, and charges of the probate are paid

gives, devises, and bequeaths to his son *C. F.* and to his heirs and assigns for ever, subject to, and charged with the payment of all his just debts, and the legacies before given to his wife, daughters, and others, and he thereby binds and charges all his messuages &c. with payment thereof.

Lately, He appoints his said son, his daughters *M.* and *A.* and his nephew *C. F.* joint executors, and desires that his wife may have the right of dwelling in his house, and the use of such rooms, bed, bedding, linen, woollen, books, kitchen and other furniture, as she may want or have occasion to make use of for her own use, for her natural life.

August 6, 1766, The testator, by a codicil executed in the presence of three witnesses, reciting his will, and the gift and devise to his son *C. F.* his real and personal estate, subject to the payment of his debts, funeral expences and legacies, and the appointment of executors, he revokes, alters, and makes void, so much, and such part of his will as gives, devises, and bequeaths, his real and personal estate, or any part or parts thereof, unto his said son *C.* and also such parts of his said will as makes and appoints his said son *C.* and his daughters *M.* and *A.* and his nephew, joint executors; and he thereby declares that he intends, that so much, and such part of his will as before mentioned, and intended to be revoked, shall be absolutely void and of no effect; provided that all other parts of his said will (except what was theretofore mentioned, and intended to be revoked or altered) should and remain in full force.

By the said codicil, he gives, devises, and bequeaths, all his messuages and all his real and personal estate to his nephew *C. F.* and to his cousins *E. F.* and *J. J.* and to their heirs and assigns for ever, in such as after mentioned, and he appoints them joint executors.

And his will and desire is, that his executors and trustees should in the first place pay all his just debts, funeral expences, charges of the probate, and all other charges incident to the same; As also, that they permit his wife to enjoy his farm and lands in Nervenden, and receive the rents and profits thereof to her own use during her life: that they should also pay the annuity and legacy of all things given her by his will to its full extent; and that they should, out of his estate and effects, make and pay unto his daughters and others the legacies given them in the manner as by his will is directed; and if any of his daughters should think proper to let their money lie after the same should become payable, then his executors and trustees should give security for payment of the same out of his estate, with interest from the time they all become payable, at 4*l.* per cent.

And upon further trust and confidence, that if his son *C.* should be or be indebted unto any person or persons on bond or other security which might in anywise charge or affect the estate he should leave, such part or parts thereof as should after the testator's death come to him, or fall into his hands, then he desired his executors and trustees, to hold and keep possession of all his messuages &c. which should remain after payment of his debts, legacies, and other payments directed to be paid by his will, and from time to time receive

ceive and pay the neat produce thereof, after all taxes, repairs, charges of receiving, and all other outgoings and deductions into the proper hands of his son *C.* if in *England*; or if abroad, then to such person as he should think proper to appoint, towards the support and maintenance of his said son whilst he should continue indebted as aforesaid, and not to any person to whom his son should assign, or transfer, or order, or direct to receive the same, or for or in discharge of any debts of his son, it being his full intent and meaning that none of his estate should be applied towards payment of any of the debts of his said son.

But if his son should, at the time of his decease, stand clear and be out of debt, and not owe any one person 50*l.* or any two or more, or any greater number of persons 150*l.* in the whole, or if he should be so, or further indebted, and should afterwards pay off, compound, or otherwise discharge such debts, so that the estate which the testator should leave could not after the same should come to his son's hands be in any wise charged with or affected thereby, or made liable to the payment thereof, then, and in either of the said cases, his will and mind is, and he orders and directs, that his executors and trustees should, within one year after his decease, if his son should be then clear and out of debt; or if he should be then indebted to any person, and should afterwards pay off or compound, and discharge such debts so as aforesaid, then within one year next after such debts should be so paid off, compounded and discharged, account to pay and deliver all his personal estate, and convey and assure all his real estate to his son, and to his heirs and assigns for ever, subject to the payment of all such legacies and sums of money as he had given, ordered, and directed to be paid by his will.

He by his will impowers his executors to retain 20*l.* a-piece for their trouble, and all costs, and that they shall not be charged with more than they shall receive, or be liable for the acts of each other.

And if his son should not be able to pay off, compound, or discharge his debts in his life-time, then *In trust*, that his executors and trustees should within six months then next after the death of his son, account for and deliver his personal estate, and convey his real estate unto the heirs of the body of his son lawfully begotten; and if his son should leave no issue of his body lawfully begotten, then *In trust* to account for, and convey the same unto his four daughters, and their heirs equally as tenants in common, and not as joint-tenants.

The executors have proved the will. The said *C. F.* the son abroad in *South Carolina*, considerably indebted beyond the sum stipulated by the codicil.

The personal estate is not sufficient to pay the debts, legacies &c.

Query 1st. Is Mr. *T. F.*'s will or codicil an appointment either of the copyhold under the agreement indorsed upon the settlement, or of the estate in *Nottingham* and *Beckley*, under the deed of *O. 1736*, of the estates in *Nervenden* and *Warthing*, under the deed

of April 1725, and January 1733? Or is the eldest son entitled in reversion to the copyhold, and Mrs. F. to her interest for life in the other estates? And are those estates, or the reversions only, charged with the debts and legacies?

Opinion. Mr. T. F.'s powers of appointment over the several estates differ. The copyholds (after the estates to the husband & *ux.*) by deed of 1722, he might appoint to the use of such child or children of the marriage as he should think fit. *Nervenden*, by the deed of 1733 (made in execution of the powers reserved by deed and fine of 1725) after the estates to the husband & *ux.*, he might appoint to children, and subject to charges &c. And *Nottingham* and *Bechley* are by deed and fine in 1736, subjected immediately to such uses as he should appoint. Though he has not accurately executed these powers by subjecting the whole to debts and legacies, when it is plain, that the copyholds could not, under the terms of his power, be so appointed, yet I think, that he intended to dispose of all his real estate, freehold and copyhold. Mrs. F. therefore must elect whether she will renounce the will, or abide by it; that is, whether she prefers *Nervenden* and the copyholds for life by the settlements to *Nervenden*, and the annuity, with the use of the dwelling-house and furniture as devised by the will. As to the daughters, it is for their benefit to take under the will, the settlement having provided nothing for them. And as to the son, I presume it is for his benefit to abide by the will, because if he takes under the settlement in contradiction to it, he can claim only *Nervenden* and the copyhold after his mother's death, and will forfeit *Nottingham* and *Bechley*. Upon the whole, the will and codicil of Mr. F. must take effect or fail by force of election in equity between the settlements and the will; and that election must be decided by Mrs. F. for herself, and by the son for himself. *Nottingham* and *Bechley* were absolutely in the testator's power; so is *Nervenden* as against the son and the children. The copyholds being surrendered to the uses of the settlement of 1722, which gives the testator a power to appoint by will, are surrendered to the use of his will *sub modo*; and I think that he intended by the will to dispose of them, together with all the rest of his property real and personal.

Query 2d. What parts of the house and furniture is Mrs. F. entitled to the use of? and must she keep the same in repair, and pay the taxes? She has at present two of her daughters unmarried, and with her, but they are both of age.

Opinion. Mrs. F. is entitled (if she pleases) to the use and occupation of all the furniture in the house, as well as the house itself during her life. She is not bound to keep the furniture equally good, by replacing it from time to time as it shall decay. Reasonable care ought to be taken of it in such manner as per-

sons ordinarily use their own with, which gradually wears out with time. The house ought also to be kept in tenantable repair, and she must pay the taxes. If her unmarried daughters agree to live with her, the point of contribution and maintenance may be settled between them.

Query 3d. How can the trustees raise the fortunes given to the daughters? or what security must they give for payment of these fortunes, in case the daughters should think proper to let them lie?

Opinion. I would advise the trustees in the will to make a security for the daughters trustees, by demising a term of 500 years to other trustees for raising the same by mortgage, or out of the rents and profits. This security ought to be made on the *Nottingham* and *Beebly* estates, over which the testator Mr. *T. F.* had an absolute and immediate power of appointment, to such uses as he should think fit. Till the principal sums shall be raised, interest must be paid at the rate of 4 per cent.

Query 4th. What assurance are the trustees to expect, or can they have, that the son is not in debt beyond the sums stipulated by the codicil?

Opinion. The father has by the will given to the son the fee-simple of all the estates; and by the codicil he has, in my opinion, annexed a condition repugnant to the estates given; for in case the son is indebted beyond 150*l.* the trustees are directed to hold the possession, and pay or reinvest the annual profits to the son (prohibiting the payment of any of the son's debts by the trustees out of such profits, or out of the testator's estates), notwithstanding which the father still leaves the absolute inheritance in his son. And in case the son shall be clear from debts at his decease, or shall afterwards compound and pay them off, then the trustees are directed to convey all the real estates to the son. This disposition is inconsistent, and I think impossible. If a man gives lands in fee-simple to another, he cannot say, that the judgments and mortgages of that tenant in fee-simple shall not bind those lands. And if this be law as to a legal estate in fee, the same rule is applicable to a trust.

Query 5th. In general, the trustees desire your advice how to act?

Opinion. I do not know what evidence or assurance can satisfy the trustees, as to the *quantum* of the son's debts, so as to induce them, after the debts and legacies are paid, to convey and let him into possession. It is so easy to secret debts and incumbrances for a time, and for a particular purpose, that the trustees will obtain satisfaction on that head with difficulty. Besides, if debts are cleared and compounded one day, in order to procure a conveyance,

veyance, pursuant to the will, the whole estate may be incumbered and sold the next day. Upon the whole, therefore, as the prohibition is nugatory and repugnant to the estates devised, both in law and equity, and as the son may incumber his estate, even though the trustees hold the possession, and may also waste and incumber by future acts, even though he should literally comply with the condition, even for the sake of a conveyance from the testator's trustees. I cannot encourage them to hope much good from a trust thus conceived; but in duty to the testator's will, and in prudence to themselves, considering the unfortunate dissipation of the son's conduct at present, I would advise them, unless he and the mother and sisters can settle every thing by amicable indenture of agreement, to procure the mother and daughters to file a bill for taking the accounts &c. &c. and for general directions in *Chancery*, making the son a party to the suit, and serving him with a *subpœna* and notice of the suit where-ever he is abroad.

Query 6th. Whether the trustees have power to cut timber?

Opinion. The estate limited in fee to the trustees, and the nature of their trusts, warrant the power of cutting timber, if it be the most eligible means of performing these trusts; but under all the complicated circumstances of this case I cannot advise them to do it, without the indemnity of a decree, and the report of a master in *Chancery*, as to the expediency, and the *quantum* confirmed by the court.

August 22, 1767.

C. Yorke.

C A S E.

E. being lessee of a house in St. Martin's-Street, under the usual covenants, assigned the lease for a valuable consideration to **F. F.**

About 23d January last **F. E.** was arrested, and carried to the King's Bench prison, and having remained there two months, on the 24th March a commission of bankruptcy issued against him, and he was declared a bankrupt; the act of bankruptcy was, his being the two months in prison.

About the latter end of February **E.** sent his wife to one **W. E.** a debtor to him in about 20*l.* on a book debt, with a receipt for the book debt; in exchange for this, **W. E.** sent his note of hand payable to the bankrupt, or order, three months after date.

With this note indorsed by the bankrupt, the wife was sent to the agent for the landlord of the house, who gave a receipt for it to this effect, *viz.* "Which, when paid, will be in full for half a year's rent due at Christmas then last."

At

At the time of the bankruptcy there were not any goods upon the premises; but the assignees under the commission having since sold the lease, the house is now furnished, and the note not being paid, the landlord has threatened a distress not only for the rent accrued since the bankruptcy, but for the rent for which the note was intended as a discharge, and which accrued before the bankruptcy. The assignees are ready to pay the rent accrued since the bankruptcy; and it is not doubted but that *W. E.* and the agent for the landlord had notice both of the imprisonment and the insolvent circumstance of *F. E.*

Query. Can the landlord recover against *W. E.* the money due upon this note? if he can, will *W. E.* be liable to pay it again to the assignees? or can the landlord make his election, and by giving up the note to the assignees maintain a distress, or recover by ejectment the rent due previous to the bankruptcy, and the issuing of the commission?

Opinion. There is no doubt but the landlord may distrain the goods of the vendee, unless the receipt which he gave to *E.* be a bar to it. The note for which that receipt was given was not transferred to him by the indorsement, therefore I understand the receipt to be an acknowledgment of satisfaction only in the case of that note being paid voluntarily, which for want of an indorsement by a person having power to assign he could not compel the payment of. I consider *E.* as a bankrupt from the day of the arrest. If the landlord may distrain for the rent, the assignees must make it good to their vendee; but I think the landlord must in such case give up the note to the assignees, who might maintain *trover* for it. The note being in possession of the assignees, they may recover the 20*l.* against *W. E.* if they chuse to sue upon that rather than the book debt; but they cannot have both. Upon the whole therefore, I think the justice of the case is, that the assignees should pay the landlord his rent, and receive the 20*l.* of *W. E.*

November 21, 1767.

E. Thurlow.

CASE

C A S E.

January 24, 1723. **B**Y indenture of four parts, between Sir *T. R.* of the first part, *C. R.* his sister, of the second part, *L.* of the third part, and Serjeant *S.* and *E. H.* Esq; of the fourth part.

It was witnessed, that in consideration of a marriage intended between the said *H.* and the said *C.* the said Sir *T.* covenanted with *H.* to pay within a year after the marriage, 3000*l.* with interest from the marriage to said *S.* and *H.* or such other persons as the said *H.* and his intended wife should direct for the purposes after mentioned.

And the said *H.* covenanted with the said Sir *T.* that the said *H.* will pay within a year after the marriage 3000*l.* to said *S.* and *H.* or such persons as Sir *T.* and *C.* shall direct for the purposes after mentioned.

And it was declared between the parties, that the said sums of 3000*l.* and 3000*l.* shall be laid out in the purchase of freehold or copyhold lands or hereditaments, and be settled thus, *viz.*

To the use of H. for life, Remainder to the said C. for life, remainder to the first and other sons of the marriage, remainder to the daughters tenants in common, remainder to the right heirs of H.

*Provisoe for enabling the said H. and his intended wife, or the survivor, to charge the lands with 2000*l.* for the younger children.*

*Provisoe also, that the said 3000*l.* and 3000*l.* or any part thereof, may be laid out in the purchase of any freehold estates, to be settled the same uses and purposes as near as may be, as are before limited and expressed, and subject to the same powers and provisoes.*

*And it was agreed, till such purchase was made, that the said 3000*l.* and 3000*l.* when paid, shall be deposited for safe custody upon lands or other securities as the said *H.* and *C.* or the survivor shall direct, in the name of Sir *T. R. S.* and *H.* and the survivor, his executors or administrators.*

*And it was agreed that the trustees should not be chargeable with any part of the money so deposited, lent, or laid out, nor with the receipt of any other monies than what they actually received, nor one with the receipt or loss of the other, and that the trustees may deduct out of the 6000*l.* their charges and expences.*

A bond was given from *H.* to Sir *T. R.* Serjeant *S.* and Mr. *H.* in 300*l.* conditioned for *H.* leaving at his death to his younger children 300*l.*

Note. The above mentioned marriage took effect, and in 1729, There then being living of that marriage three sons, *T. R.* and *R.* 4000*l.* to wit, 300*l.* part thereof, paid by Sir *T. R.* and 1000*l.* remainder thereof paid by *H.* was laid out in the purchase of an estate held by lease of the Dean and Chapter of St. Paul's, London, for twenty-one years, And also in certain freehold lands, which leasehold and freehold were assigned and conveyed to *S.* and *H.* to the uses and on the trusts in the marriage articles.

In Hilary term, 7 Geo. 2. A judgment in debt in the *Common Pleas* for 4000*l.* was confessed by Mr. Serjeant *S.*

The 12th Feb. 1773, by a note signed by Mr. Serjeant *S.* Sir *T. R.* and Mr. *H.* taking notice of the above mentioned articles, and that 2000*l.* (part of the 3000*l.* to be paid by Mr. *H.* in pursuance of those articles) remained unpaid, for security whereof the said judgment was confessed, *It was agreed*, that upon payment of the said 2000*l.* by Mr. *H.* the said judgment shall be vacated.

The 27th May, 1734, A lease from the Dean and Chapter of St. Paul's was granted to Mr. Serjeant *S.* in consideration of a surrender of the lease above mentioned, to be purchased of the same premises for twenty-one years from *Lady-day* last at 30*l.* per annum.

The 9th January, 1734, A bond was given from Mr. *H.* to Mr. Serjeant *S.* in 400*l.* penalty, *conditioned* for the indemnifying the Serjeant from the rent and covenants in the above lease.

Note. On the above judgment no execution has been taken out, nor any other method taken to compel Mr. *H.* to pay the 2000*l.* secured by the settlement, nor has any part of it been paid.

Mrs. *H.* is long since dead, having left issue of the marriage one son only, now living, and Mr. Serjeant *S.* who survived Mr. *H.* is also lately dead, and Mr. *H.* is now living, and apprehended to be in circumstances to answer the 2000*l.* now due from him, and Mr. Serjeant *H.*'s executor is apprehensive lest the not prosecuting Mr. *H.* to fully perform the covenant in his marriage settlement from 1723 to 1734, should be deemed in equity such a gross neglect as to charge the representative of Mr. *H.* and Mr. Serjeant *S.* with the deficiency, in case Mr. *H.* be now insolvent, and the not taking out execution on the judgment should be deemed such a gross neglect in the Serjeant or his representative, as to make him personally liable.

Sir *S. R.* has lately requested Serjeant *S.*'s representative to take out execution on the above settlement, which he has consented to, if Sir *T.* will indemnify him.

Query. As this case is so circumstanced, how far and in what manner will Mr. Serjeant *H.*'s representative be answerable for any such neglect as aforesaid, or how otherwise can he purge or excuse such neglect, and, in general, please to advise what is proper and advisable for him now to do in this case?

Opinion. I am of opinion, that the representative of Mr. Serjeant *S.* will not be answerable for a gross neglect in his testator; for the 3000*l.* was not originally demandable by Serjeant *S.* and *H.* since it is stated to have been made payable either to them or to such persons as Sir *T. R.* and his sister should direct, and a pay-

ment made to any other person in pursuance of such direction would undoubtedly have been a good payment. And, besides, if the parties interested in the money, or any one on their behalf, had even brought a bill against the trustees to compel them to sue for the money, or to take out execution on the judgment, Mr. Serjeant *S.* and *H.* would, even in such case, only have been obliged to permit their names to be made use of in any action or suit which the other persons might think proper to commence or carry on for the recovery of the money, upon being properly indemnified; and as this was all that the trustees would have been obliged to do by compulsion, I conceive they would be under no obligation as trustees to put themselves to expence, by engaging in a law-suit without such indemnity, especially as the trustees are made answerable only for what they shall actually receive.

Middle-Temple, Feb. 15, 1739.

Tho. Clarke.

Note. Mr. *H.* is since become a bankrupt.

Query. Ought Mr. Serjeant *S.*'s representatives to make a claim of this debt before the commissioners, or is it more advisable for him not to concern himself about the payment of the money?

Opinion. The claiming the debt before commissioners may be of service to the infant son (by procuring him some provision) and cannot, I conceive, be prejudicial to Mr. Serjeant *S.*'s representatives, and therefore I think it will be no ways improper to make such a claim of the judgment debt before the commissioners.

July 15, 1740.

Tho. Clarke.

ses, with the opinion of the judges, on several points relating to the window tax.

C A S E of a house left in the care of a servant only.

Sex, Steyning, A T a meeting of the commissioners, for putting in g. 23, 1750. execution the act relating to the duties on sles, windows, and lights, Sir *C. M. G.* Bart. appealed against a large of seventy-four windows in his house called *Higden*, and it appeared to us, that the said house is not inhabited, but left to the care of a servant, who lives in part of the premises called a dog-ken- now converted into a house, and taxed, and such servant does not ge in the said *Higden* house, but occasionally airs the house, and es care thereof; WE are of opinion, that the said *Higden* house is

is chargeable with the said duty, and therefore we gave no relief to the said appellant; but he being dissatisfied with our determination, required us to state the case specially, to be transmitted to one of the judges of the court of *King's Bench*, or *Common Pleas*, or to one of the barons of the *Exchequer*, for his opinion thereon, which we have here stated accordingly. Given under our hands the day and year above written.

J. B.
E. H.
T. L.

Opinion. We are of opinion, the determination of the commissioners is right.

W. Lee.
J. Willes.
T. Parker.
M. Wright.
T. Denison.

M. Foster.
E. Clive.
S. S. Smythe.
R. Adams.
H. Legge.

C A S E *Of two houses made into one by communication.*

Kent, St. Paul's, R. S. F. holds two houses which adjoin close Deptford. **M** to each other, and have separate and distinct stair-cases, *And also* distinct avenues from the street to the house, and she was charged by the assessors for them as two separate houses; but the surveyor for the crown finding, on his inspection, that there is communication between the two houses by a door-way on the ground floor, which is constantly made use of, surcharged her for one entire tenement, against which she appealed to the commissioners, who allowed her appeal.

J. S.
W. H.
W. S.

Opinion. We are of opinion, that the determination of the commissioners is wrong.

W. Lee.
J. Willes.
T. Parker.
M. Wright.
T. Denison.

M. Foster.
E. Clive.
S. S. Smythe.
R. Adams.
H. Legge.

C A S

C A S E *Where the appellant added one light in order to reduce the charge on the number of windows.*

County of Worcester. **O**N an appeal to the commissioners from a charge made by the surveyors of the windows, the following case is stated at the surveyor's request, pursuant to the act of parliament in that case made and provided.

The appellant is by the assessors of the parish charged *two shillings* for his house; by the surveyors he is charged with *ten windows*; he saith he hath but *nine windows*, having fixed between two of the windows a piece of glass of about four inches in breadth, and eleven inches in length.

To this charge of the surveyor, the appellant hath appealed to the commissioners, suggesting he ought not to be charged more than *two shillings* for his dwelling house; and the commissioners have determined, that the appellant is not liable to be charged any more than *two shillings* for his house, and have taken off the charge made by the surveyor; with which determination the surveyor is dissatisfied, apprehending the same to be contrary to the true intent and meaning of the statute in that case made and provided.

We therefore the major part of the commissioners present at the said appeal, at the request of the surveyor, have stated and signed this case, and humbly submit it to your lordships opinion, whether the *ten windows* ought, or ought not, to be charged?

R. M.

E. S.

Opinion. We are of opinion, that this is a manifest evasion of the act, therefore the determination of the commissioners is wrong.

Mansfield.

J. Willes.

T. Parker.

T. Denison.

M. Foster.

Serjeants-Inn, June 27, 1757.

The determination of the judges, that the owners of all houses, let out to inmates, should pay the duty on houses and windows chargeable thereon.

C A S E.

Middlesex, **A**T a meeting of the commissioners of the land-tax, as to wit. **A** commissioners for putting in execution several acts of parliament, made and passed for granting to his Majesty several rates and duties upon houses, windows, or lights &c. at the White-Hart tavern, in Holborn, on Wednesday, February the 26th, 1755, Mr. S. S. appeared

appealed against the window light tax, assessed on his eight houses in *Spread-Eagle-Court, Gray's-Inn-Lane*, in the parish of *St. Andrew's, Holbourn*, in the county of *Middlesex*, let out unto tenants, containing ten windows or more in each house; and Mr. *P.* one of the collectors for the window light duties, and one of the overseers of the poor for the said parish, being examined touching the matter in question, informed the board, that the landlords of these houses doth not pay to church or poor's rates, but pays other parish rates for the same, as scavenger and watch. The commissioners present were of opinion, that the circumstances or merits of the said appeal was within the meaning of the act of parliament, made and provided in that behalf, and therefore allowed the said appeal, and discharged the said tax by virtue of the following clause in the said act, folio 128, to wit,

“ And be it enacted and declared by the authority aforesaid, that where any dwelling house is, or shall be let in different apartments to several persons, and the landlord of such house pays other taxes and parish rates for the same, such landlord shall be deemed and taken to be the occupier of such dwelling house, and be charged with, and liable to pay the said rates and duties for the same, as one entire house.” Upon which Mr. *G.* surveyor for the crown, being present, and dissatisfied with the above determination of the commissioners, desired the case might be stated to be laid before the judges for their opinions thereon, alledging, that by the following clause in the said act of parliament, the said appellant ought to pay the tax assessed on his houses abovementioned, to wit.

“ Provided always, and be it further enacted and declared, that such dwelling house only, where the occupier or occupiers thereof by reason of his, her, or their poverty only, is or are exempted from the usual taxes, payments, and contributions, towards the church and poor, shall be construed or understood to be exempted out of this act, or discharged of the rates and duties hereby granted, and that only in such cases where the dwelling houses so occupied are cottages, not containing above nine windows (or lights) in the whole, any thing herein contained to the contrary notwithstanding.” Folio 125.

“ And be it also enacted and declared, that where any house shall be inhabited by two or more person or persons, or family or families, such houses shall nevertheless be subject to, and shall in like manner, pay the rates and duties charged on houses, windows, or lights, by this act, as if such house was inhabited by one person or family only.” Folio 127.

Quere, Whether the said *S. S.* is chargeable for the said premises by virtue of the abovementioned clauses or not.

J. R.

P. F.

W. W.

J. C.

R. F.

Opinion, We are of opinion, that the determination of the commissioners is wrong.

Mansfield.

T. Dennison.

J. Willis.

M. Foster.

T. Parker.

Serjeant's-Inn, June 27, 2757.

C A S E Relating to work-shops, ware-rooms &c. in the hundred of Pottern Canning &c. Com. Wilts.

Wiltshire, **A**T a meeting of the commissioners for hearing and determining the appeals upon the tax on houses, windows, and lights, for the hundred of *Pottern* and *Cannings*, and borough of *Devizes*, in the said county, on the 10th day of *February*, 1757, *S. P.* of the said borough of *Devizes*, clothier, being possessed of, and occupying a building in the said borough, lying under, or covered with one roof; which building is four stories high, *viz.* A ground floor, and three stories over that. Part of the ground floor and chambers of the said dwelling-house, are used for habitation and dwelling, (in which part are eighteen windows); but the other part of the ground floor and chambers of the said building are used for work-shops for carrying on the clothing trade, and for manufacturing woollen cloth, and for ware-rooms, and stowing wool and other materials in carrying on the woollen manufacture, and not as a dwelling-house, or for lodging or habitation; and some of the said ware-rooms lie over that part used for a dwelling-house, (in which part used for working-shops and ware-rooms are sixteen windows). There is an entry or passage on the ground floor of the said building, which runs through the middle of the said building, and which is the only entrance into, or from the said building, which divides the part used for a dwelling-house from the part used for shops and ware-rooms, *viz.* the entrance into the same passage is by one door out of the street, and out at another door to the yard or backside belonging to the same building. In the same entry or passage there is one door on the right hand, leading into that part of the building which is used for a dwelling-house, and another on the left hand leading into that part of the building which is used for work-shops and

and ware-houses. There is a close partition, both above and below, between the part used for a dwelling-house, and the part used for work-shops or ware-houses; and there is no communication between the dwelling-house, working-shops, and ware-houses, either above or below stairs (except by the aforesaid entry or passage) there being a stair-case in the work-shops below stairs, for going up into all the ware-rooms above stairs. The said *S. P.* was charged by the assessors in the parochial assessment only for the above *eighteen windows*, in that part of the said building used for a dwelling-house; but the surveyor of this division, on his surveying, finding *thirty-five windows* in the said building, *viz.* *eighteen* in the dwelling-house, and *seventeen* in that part made use of for work-shops, and ware-houses, (conceiving that as all the said building was under one roof, all of it ought to be looked upon as part of a dwelling-house) left notice in writing with the said *S. P.* that he intended to make a surcharge on him for *seventeen windows*; against which surcharge the said *S. P.* made his appeal; and on hearing the said appeal we were and are of opinion, that the *seventeen windows* in that part of the said building which is used for work-shops and ware-houses only, are not chargeable by the said act, the same being separate, distinct, and entire, from that part used for a dwelling-house and habitation, and therefore we have not confirmed the surveyor's charge.

Mr. *J. T.* the general surveyor of this division, declaring himself dissatisfied with our said determination, and requiring us to state specially and sign the case aforesaid, in order that it might be transmitted to one of the justices of his Majesty's court of *King's Bench* or *Common Pleas*, or to one of the barons of his Majesty's court of *Exchequer*, we do hereby humbly certify the same accordingly.

J. S.
W. L.
G. W.

Opinion. We are of opinion, that the determination of the commissioners is wrong.

Mansfield.

J. Willes.

T. Parker.

Serjeant's-Inn, June 29, 1757.

T. Denison.

M. Foster.

C A S E

C A S E On a surcharge of windows &c:

Colchester, in **M**ay R. R. D. stands charged by the assessors for *fourteen windows*, or lights, and the surveyor by his surcharge has raised him to *twenty windows*.

Upon appeal this day the case appears to be, that the increase of *windows* is occasioned by charging two shop windows, two warehouse windows, one compting-house window, and one garret window, rated only for the laying in of timber and boxes in his trade.

The commissioners apprehend, that Mr. D. should stand charged, according to the original assessment, at *fourteen windows*; for that in the enumeration in the act, no shops, warehouses, or compting-houses, are directed to be assessed; though places of less consequence, such as wash-house, pantry, laundry, larder &c. are.

Wherefore their determination is, that Mr. D. should stand charged for *fourteen windows or lights*; with which determination the surveyor declares himself dissatisfied.

<i>P. S.</i>
<i>S. W.</i>
<i>J. G.</i>
<i>R. K.</i>
<i>W. S.</i>
<i>J. W.</i>

Opinion. We are of opinion, that the determination of the commissioners is wrong.

<i>Mansfield.</i>
<i>J. Willes.</i>
<i>T. Parker.</i>
<i>T. Denison.</i>
<i>M. Foster.</i>
<i>E. Clive.</i>

<i>S. S. Smythe.</i>
<i>R. Adams.</i>
<i>H. Bathurst.</i>
<i>E. Wilmot.</i>
<i>W. Noel.</i>

Serjeants-Inn, June 19, 1759.

C A S E.

Newcastle upon Tyne, **A**T a meeting of the commissioners for hearth and county. **A**rguing and determining appeals upon the window tax on houses, windows, and lights, for the said town and county, on the first day of *September, 1758.*

J. W. of Pilgrim Quarter, in the said town, (upon notice given to be surveyor of the said town) appealed upon a charge of *fifty-two windows, or lights*, charged by the *parochial* assessors upon his dwelling-house, with the appurtenances; upon which notice, a survey being made by the said surveyor, the state of the case appeared as follows, *viz.*

From the street there is only one entrance into the dwelling-house, and into a square court or yard backward; in which court or yard is a building adjoined to the said dwelling-house, but not so high as the said dwelling-house by one story; which building is not lodged in, but made use of as printing-offices and ware-rooms. The said building is three stories high, *viz.* one ground-floor, and two stories over, in each of which was a communication between the dwelling-house and the said building upon the landings of each story; which communications are now built up. That there is now, no way into the said printing-offices and ware-rooms, or any part of them, but by a staircase out of the aforesaid court or yard. That underneath part of the said printing-offices and ware-rooms, on the ground-floor, is a brew-house, and a back-kitchen having a fire-grate and pot fixed, and dresser and shelves, though alledged by the appellant not to be made use of as a back-kitchen, but as a ware-room. Underneath another part of the said building is an office for keeping of accounts. Into which brew-house, back-kitchen, and office, on the ground-floor, are separate entrances from the passage in the said court: in which said building are twenty-five windows or lights, of which the appellant said he ought to be relieved, as a separate building from his dwelling-house, the communication being built up between the said offices and dwelling-house: but we, the majority of the commissioners present from the state of the case above, were and are of opinion, That the windows and lights in the said building are chargeable, and therefore did not relieve the said appellant; who being dissatisfied with our determination, requested a state of the case to be transmitted to one of his Majesty's justices of the court of King's-Bench or Common-Pleas, or one of the barons of his Majesty's court of Exchequer: we do hereby humbly certify the same accordingly. Witness our hands.

R. S.
C. S.
W. P.
H. E.
W. C.

Opinion. We are of opinion, That the determination of the commissioners is right.

Mansfield.
J. Willles.
T. Parker.
T. Denison.
M. Foster.
E. Clive.

S. S. Smythe.
R. Adams.
H. Bathurst.
E. Wilmot.
W. Noel.

Serjeants-Inn, June 19, 1759.

C A S E.

County of **M**r. *H.* is now in possession (as heir at law of his late father) of two houses, which were separate purchases, made by his said father; and one of which houses had been for many years inhabited by Mr. *H.*'s late father and himself all the year 1747, when Mr. *H.* pulled down one of the said houses, then being in the occupation of *J. B.* and rebuilt the same: and which said two houses adjoin close to each other, and have separate and distinct stair-cases, and also different avenues from the street to the house, and there is an inward communication between the two houses by a door-way on the ground-floor, which is constantly made use of: and Mr. *H.* ever since the said two houses were in his possession, has been charged (as well by the assessors of the window-tax as collectors of the land-tax, and overseers of poor and parish rates) for them as two separate houses; and the same have always been, and are now, distinguished or known as two houses.

Mr. *H.* the appellant, is by the assessors of Mr. Alderman *B.*'s ward, in Leicester, charged for the said premises to the window-tax for one entire tenement.

To this charge of the assessors and surveyors of the division aforesaid, Mr. *H.* the appellant, hath appealed to the commissioners, and our dear commissioners have determined, that the appellant is liable to be charged for one entire tenement, and not for two separate houses to the window-tax; with which determination Mr. *H.* the appellant, is dissatisfied.

We therefore, the commissioners present at the said appeal, at the request of the said Mr. *H.* the appellant, have stated and signed this day, and humbly submit it to your lordships opinion, Whether the said Mr. *H.* is chargeable for the said premises to the window-tax for one entire tenement, or for two separate houses.

J. H. Mayor.

T. G.

T. S.

Opinion. We are of opinion, That the determination of the commissioners is right.

Mansfield.
J. Willes.
T. Parker.
T. Denison.
M. Foster.
E. Clive.

S. S. Smythe.
R. Adams.
H. Bathurst.
E. Wilmot.
W. Noel.

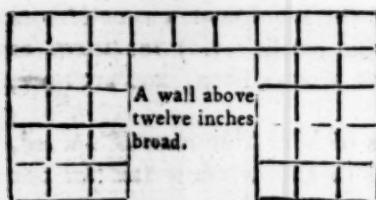
At the Merchant's-Inn, June 19, 1759.

C A S E.

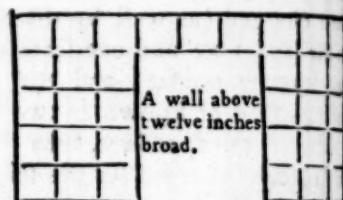
City of Oxford, in the **U**PON an appeal to the commissioners, county of Oxford. from a charge made by the surveyor of the windows, the following case is stated at the surveyor's request, pursuant to the act of parliament in that case made and provided.

The appellant is by the assessees of the parish assed for *fourteen windows*, and by the surveyor is charged for *sixteen windows*; the appellant having laid *four windows* into *two*, as appears by the plan hereunder.

One entire Frame.



One entire Frame.



To this charge of the surveyor, the appellant hath appealed to the commissioners, suggesting, he ought not to be charged more than *fourteen windows*. And the commissioners have determined, that the appellant is not liable to be charged more than *fourteen windows*, and have taken off the charge of the surveyor; with which determination the surveyor is dissatisfied, apprehending the same to be contrary to the true intent and meaning of the statute in that case made and provided.

We therefore, the major part of the commissioners, present the said appeal, at the request of the surveyor, have stated and signed this case, and humbly submit to your lordships opinion, Whether the same ought to be charged or not.

T. T. Mayor.

J. N.

J. T.

March 2, 1759.

Opinion. We are of opinion, That the determination of the commissioners is wrong.

Mansfield.

J. Willes.

T. Parker.

T. Denison.

M. Foster.

E. Clive.

S. S. Smythe.

R. Adams.

H. Bathurst.

E. Wilmot.

W. Noel.

Serjeants Inn, June 19, 1759.

A TITHE

A TITHE CASE.

THE Rev. Mr. C. about twenty-one years ago last *Lady-day*, let and set the rectory of Middle-Chinnock to T. W. at the yearly rate of 82*l.* per annum. A brief memorandum of which was drawn up on a scrap of paper, and signed by each of them; in which it was stipulated, that the said W. should pay Mr. C. 10*l.* at *Midsummer*, 60*l.* at *Michaelmas*, 6*l.* at *Christmas*, and 6*l.* more at *Lady-day*.

Some time after, W. perceiving what a foolish contract he had made, acquainted his landlord, that he could not, nor ever would, pay the rent after that unequal manner. To which Mr. C. replied, *then pay it as you can.* W. accordingly always paid his *Michaelmas* rent at *Christmas*, and his *Lady-day's* at *Midsummer*.

Query. Now, as Mr. C. died on the 3d of September last, I should be glad to know, What proportion of rent his executrix can legally, or equitably claim from the said T. W. Can she claim agreeable to the proportion of *tithes*, that were severed from the ground, to the day of her husband's death? or only (as a tenant for life) a proportionable share of the *Michaelmas* rent? or is the original contract binding, and the rent to be paid agreeable thereto?

Opinion. I am of opinion, That this case is not within the act of 11 Geo. 2. cap. 19. and that Mr. C. had more reason to complain of the periods of time for payment of the rent than Mr. W. had. If it can be made appear to the satisfaction of a court of equity, that the times and sums in the written agreement were varied by the consent of both parties, to equal quarterly payments, I think, as Mr. C.'s executrix will lose the rent between *Midsummer* and *Michaelmas*, it then will only be after the rate of 20*l.* a quarter; but if the written agreement remains in full force, she appears to me to be without remedy for the part of the 60*l.* between *Midsummer* and *Michaelmas*, and must refer it to the tenant's conscience.

February 7, 1766.

W. Sayer.

C A S E.

June 9, J. P. by his will devises to a youngest son in these words, 1762. *J.* *viz.*

" Item, I give to my son T. P. all that part of the estate which I
" bought of my brother-in-law W. P. and likewise a ground,
" called by the name of *Golden Lays*, which I bought of one
" J. G. And likewise I give my son T. two acres of land lying
" in a field called *Penyland*, bought of J. N. And also I
" give my son T. the house and orchard, and three lands
" " shutting

" Shutting into the orchard, being lands which I bought of
 " N. S."

The testator also devises to his eldest son as follows :

" Item, I give to my son J. P. all the rest part of the estate at
 " Greet, as I got by law, as the award will plainly set
 " forth."

Note. All the premises are freehold.

Query. What estate and interest does T. the youngest son, and J. P. the eldest son and heir, respectively take under the above devises, or otherwise ?

Opinion. I am of opinion, That the above will is not duly attested, so as to pass freehold estates ; and that the eldest son J. takes the whole freehold, as the eldest son and heir of his father.

Inner-Temple, June 26, 1767.

Thomas Warren.

Mr. Collet's opinion on the foregoing case.

By the above-mentioned devise to T. the youngest son, if there were not other words in the will to shew the intention of the testator, I think he would only be intitled to an estate for life, in the premises devised to him ; but as by the will (the probate of which is laid before me, with the above case) four several legacies, of 100*l.* each, are equally charged on the estates devised to T. and J. to be paid within a year after the testator's death, or when the legatees should attain the age of twenty-two years, it appears clearly to be the testator's intention to give to each of his sons an estate in fee in the premises devised to him ; and it hath been often determined, that where lands are devised to a person charged with the payment of a sum of money in gross, to be paid at all events at a certain time, which is the above case, a fee is devised, without any other words to pass the inheritance ; and more especially when the profits of the lands would not by the time the legacies thereon charged are payable, amount to sufficient to discharge them ; for without the fee was in such case to pass, it might happen that the devisee, instead of gaining by the devise, might be a loser, and not reap any benefit, which could never be the testator's intention ; and wherever the intent of the testator can be apparently collected from the will, it will supply the want of those words which are necessary in deeds to convey an inheritance.

Tewkesbury, Dec. 1, 1767.

H. Collet.

Mr.

Mr. Madocks's opinion on the foregoing case.

Upon reading a copy of the will at large, I am of opinion that both *T.* and *J.* take an estate in fee-simple, in the several estates devised to them respectively by the will. The words at the close of the will, *viz.* [Each person paying his equal share of all legacies and debts, &c.] are decisive of the doubt in the former part of the will, and clearly give each of them an estate in fee-simple.

Lincoln's-Inn, Dec. 22, 1767.

John Madocks.

C A S E.

A. *B.* who died intestate, suffered a recovery of his whole estate in 1708, and by a marriage settlement, dated 1714, excepts out of the said settlement, ALL that the lordship or manor of *C.* in the county of *D.* with all the rights and appurtenances thereof; together with the free-warren; *And also* a moiety of the said hundred of *C.* in the said county of *D.* with the appurtenances; *And also* the free-chapel or chauncry of *E.* *And also* except ALL those two messuages or tenements in *F.* and *G.* in the said settlement mentioned; *And also* two other messuages or tenements in *H.* and *I.* in the said settlement mentioned, or one of them, one whereof is called *St. M.* and now or late in the occupation of *L.* and the other now or late in the occupation of *M.*

Query. Whether by the words of the last mentioned exceptions, any land can or do pass with the said four messuages or tenements, though the tenants do hold lands with them?

Opinion. I think the lands usually held with the messuages, are part of the tenements excepted.

May 30, 1747.

Dudley Ryder.

C A S E.

J. *W.* a mariner belonging to his Majesty's ship *Princess Royal*, died intestate on board the said ship in his Majesty's service, leaving a wife, *M. W.*

The widow took out letters of administration to her said husband from *Doctors Commons*.

The widow, by letter of attorney, employed *J. L.* to receive from the treasurer, or pay-master of his Majesty's navy, or the commissioners or pay-masters of the wages and prize-money at the *Navy-Office*

fice or elsewhere, and all others whom it did or might concern, ALL wages and prize-money due to her as administratrix as aforesaid.

The said Mr. L. sent up to Mr. L. the letters of administration, in order to search at the *Navy-Office*, to see what was due to the deceased, Mr. L. sent his clerk, (Mr. R. since deceased) to the *Navy-Office*, where he was told the ship's books were at *Chatham*, Mr. R. was directed to one F. belonging to the office at *Chatham*, and he sent down to F. the letters of administration, in order to search and find out what was due; and he F. did search, and there appeared by the books to be due 31*l.* 8*s.* 10*d.*

One J. C. (as informed from the office at *Chatham*) conductor to the office at *Chatham*, (to whom F. directed the letters of administration) received from the clerk in person belonging to the *Navy-Office*, whose business is to pay the wages and prize-money, the said 31*l.* 8*s.* 10*d.* without any letter of attorney, or any thing from the widow the administratrix; and the said C. pretends, that he paid the 31*l.* 8*s.* 10*d.* to one S. in *London*, and delivered him the letters of administration, and S. pretends he paid F. all the money save 10*d.* which 10*d.* And also the letters of administration, S. now has in his hands, as he acknowledges. F. is absconded, and cannot be found; S. is willing to pay the 10*d.* and deliver up the letters of administration.

Query. If the widow and administratrix cannot maintain an action for the said 31*l.* 8*s.* for money had and received to her use against the treasurer, or commissioners of the navy, or the officer belonging to the office at *Chatham*, (as they have the letters of administration as aforesaid) and paid the 31*l.* 8*s.* to F. as aforesaid, or what other remedy, and against whom, has this poor woman for the said 31*l.* 8*s.*?

Opinion. The widow having once given a letter of attorney to Mr. L. trusted him to do what he would with it, and therefore, though Mr. C. had no particular warrant or power from the widow, to him expressly, yet he acted under the letter of attorney made to L. which was a sufficient authority for C. to receive, and for the pay-master to pay, and therefore no action can lie against the pay-master or any of his clerks; and if Mr. C. can discharge himself, by proving payment to F. then C. is well discharged, and the widow's remedy is against F. and if F. is insolvent, she must make the best end she can with him.

Inner-Temple, Nov. 20, 1765.

Thomas Warren.

C A S E

C A S E.

BY indenture between *W. G.* and *E.* his wife, of the one part, *B. T.* and *G. W.* of the other part, reciting, That the estate and effects the said *E. G.* was possessed of at the time of her marriage with the said *W. G.* which was then lately solemnized, were estimated at the sum of 200*l.* after payment and satisfaction of her debts; and that the said *W. G.* previous to the said marriage, consented and agreed to settle the said 200*l.* on the trusts hereafter mentioned; but being then incapable of advancing the same, did by his bond of equal date therewith, engage for the payment thereof to the said *T.* and *W.* on the 1st of Sept. then next with interest at 4*l.* per cent. On which security *T.* and *W.* by the direction of *E. G.* were to permit *W. G.* to continue it during her life. *It is therein witnessed, declared, and agreed,* That the said 200*l.* should remain, continue, and be, to and upon the following trusts, (that is to say) *In trust for all and every the three children* of said *E. G.* by *J. B.* her former husband, namely, *A. B. E. B.* and *S. B.* in equal shares as *tenants in common*, at such time or times as said *E. G.* notwithstanding her coverture, should by deed or instrument in writing, duly executed and attested, direct or appoint; and in default of such appointment, at the death of said *E. G.* *In trust for all and every of them the said A. B. E. B. and S. B.* in equal shares as *tenants in common*, to be divided between them at the death of the said *E. G.* *And it was thereby declared and agreed* by and between all the said parties thereto, that until such appointment should be made, or until the decease of said *E. G.* it should and might be lawful for said *T.* and *W.* or the survivor, his executors, administrators, and assigns, to put, place, and continue at interest the said 200*l.* on good, real, and personal securities, (but with the consent and approbation of said *E. G.*) the interest and produce whereof should from time to time be paid to, and received by such person and persons, and for such uses and purposes, and in such parts and proportions, manner, and form as aforesaid, *E. G.* should from time to time, and at any time or times during her life, notwithstanding her coverture, and whether she should be covert or sole, by writing or writings under her hand direct or appoint, *To the intent that the same, or any part thereof* might not be at the disposal, or subject or liable to the controul or intermeddling of said *W. G.* but only at her own sole and separate disposal; and in default, and until such direction and appointment, *To the proper hands of the said E. G.* or otherwise should permit and suffer her to receive and take the same to and for her own sole and separate use and benefit, whose receipt, under her hand, should from time to time, notwithstanding her coverture, be a sufficient discharge to the person or persons who should so pay the same, for so much thereof for which such receipt should be taken.

A S E. N. B. This deed was executed by all the parties, and properly attested.

By indenture between said *W. G.* and *E.* his wife, of the one part, and said *J. T.* and *G. W.* of the other part, reciting the last deed, and that the said *J. B.* died intestate, and that said *A. B. E. B.* and *S. B.* became intitled to two-thirds of his personal estate, amounting to upwards of 200*l.* *And also,* That it was agreed that the said 200*l.* secured by said *W. G.* on his bond, was intended, and should go and be accepted for said *A. B. E. B.* and *S. B.* in part of their distributive shares of their said father's effects; *And also,* That the money, securities for money, goods, chattels, and effects mentioned and contained in a schedule therein referred to, were accepted by said *T.* and *W.* at the sum of 206*l. 15s. 11d.* in full discharge of the said 200*l.* due from the said *W. G.* on the said bond, and as far as they lawfully might in satisfaction of the distributive shares of the said *A. B. E. B.* and *S. B.* of their father's effects, it appearing to be sufficient for that purpose. *It is witnessed,* That in pursuance of the said agreement, and for the purposes aforesaid, the said *E. G.* by virtue of and under the power and authority in and by the said therein recited indenture, and all and every other power and authority in her then vested or reposed, did direct and appoint the said 200*l.* should from the date thereof remain continue, and be *In trust* for the said *A. B. E. B.* and *S. B.* in equal shares as *tenants in common*: *And it is therein further witnessed,* That for the payment of said 200*l.* and in satisfaction of the remainder of the distributive shares of said *A. B. E. B.* and *S. B.* in their said father's effects; *And also* in consideration of 5*s.* paid by said *T.* and *W.* to said *W. G.* Did grant, bargain, sell, assign, and deliver, to said *T.* and *W.* ALL and singular the monies, securities for money, goods, chattels and effects, mentioned and contained in the schedule thereto annexed and above referred to, and every part or parcel thereof, with the appurtenances, *To hold* to the said *T.* and *W.* their executors, administrators and assigns for ever, but *In trust* to keep and preserve, or manage and dispose thereof as they should see proper, for the use, benefit, and advantage of said *A. B. E. B.* and *S. B.* their executors, administrators and assigns.

The said *E. G.* during her widowhood, took out letters of administration in the proper Ecclesiastical court for the diocese, for the effect of the said *J. B.* her former husband.

The children are all upwards of ten years old.

Query. If the mother has an appointment in the Ecclesiastical court of the diocese, of the guardianship of her said children, may the trustees be well satisfied in delivering over the monies and goods to her, and what discharge should they have?

Opinion. I am of opinion, That if the mother should be appointed guardian of her children in the Ecclesiastical court, the trustees will not be justified in delivering over the monies and goods

to her, but that they must preserve and keep the same for the benefit of the children, *on the trusts* reposed in them, and that the mother can give them no sufficient discharge.

February 12, 1768.

R. Perryn.

C A S E.

ABOUT Jan. 1767, Mr. J. B. agreed to demise to W. F. a messuage and lands at Danbury in Essex, for ten years with an option in the lessee for ten years further; the lessor was to lay out 45*l.* in the house and buildings, (they are Mr. F.'s own words in a written proposal) and the lessor was to keep the messuage in repair, *except* glass windows. The lessor was to take several things on the premises at an appraisement, and a lease was to be prepared.

By lease between B. of the one part, and F. of the other part, B. demise a mansion house, with the cellars, wine vaults, out-buildings, barns, stables, coach-house, cow-house, grainary, yards, ways, walls, &c. And six fields containing, twenty-eight acres, (ALL trees excepted, with liberty of ingress, &c. for B.) To hold from Lady-day for ten years with an agreement for a further term of ten years, at the option of the lessee, at the yearly rent of 45*l.* payable quarterly, with proviso for re-entry on non-payment of rent or breach of the covenants. Amongst other covenants the lessor was to keep all the premises; with the gates, stiles, &c. in repair, glazing excepted.

Then there is an agreement in the following words:

"And it is agreed by both parties, that the said J. B. his heirs or assigns, shall and will, within six months from the date hereof, pay, or cause to be paid, into the hands of the said W. F. his executors, administrators, or assigns, the sum of 45*l.* which said sum of 45*l.* the said W. F. his executors, administrators, or assigns, shall and will lay out and expend on the *mansion-house, coach-house, cow-house, barn, and grainary*, for the laying the same out, the said W. F. his executors, administrators, or assigns, shall produce receipts for the same being so laid out on the said premises, and not elsewhere, whenever demanded by the said J. B. his heirs or assigns."

There is not any covenant for a surrender of the premises at the end of the term.

The said 45*l.* has been laid out by the lessee, amongst other things taking away a timber built porch to the kitchen, with a door, two scops, one larger, a bog-house, the joists and floor of a hay-loft over the stable, and a dormer window in the roof, in turning the stable into a coach

house, in removing a building near the kitchen door, and by turning the coach house into a stable.

On an offer to settle the account of the stock taken by Mr. F. at an appraisement, amounting to 83*l.* 16*s.* 3*d.* Mr. F. produced bills to the amount of upwards of 45*l.* the greater part of which, arose from the before mentioned alterations. Mr. B. has objected to allowing the sum, alledging, that 45*l.* ought to have been laid out in repairs, and not in alterations. On the other hand, Mr. F. infieth, that he has a right to lay out 45*l.* in what he will, and that it was so agreed originally, and the account is still unsettled. The only evidence of the original agreement, is the attorney who prepared the lease, who at one time has said one thing, and at another time another thing.

Query. As the lease contains a demise of a stable and cow-house particularly, has Mr. F. a right to transform them into other buildings, or to alter and remove, any other part of the demised premises; and will Mr. F. be intitled to an allowance of more of the 45*l.* than has been laid out in actual repairs; and if the lease will not warrant the alterations, and support Mr. F.'s demand on that account, will Mr. F. be at liberty to give evidence, by way of explaining the agreement in the lease?

Opinion. As there is some little ambiguity in the words of the covenant, (the covenant being that the 45*l.* shall be laid out in the mansion house, &c. and not in the repair of the the mansion house, &c.) the intention of the parties may be explained by *parol* evidence. And as Mr. F. took the place for his own habitation, as a gentleman, and not as a farmer, I think the alteration made by him, of converting the cow-house, (which could be of no use to him as a cow house), into a stable, &c. could not be looked on as very unreasonable especially as he had so long a term as *ten years*, with an option of *ten years* more. Therefore on the whole, I should not think it worth Mr. B.'s while, to risque a law suit on this account, especially as it is stated, that the attorney who prepared the lease, varies a little in his account of the original agreement.

Lincoln's-Inn, May 12 1768.

W. H. Ashurst.

C A S E.

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August 29, 1758. In the Will of *A. D.* of this date, duly executed and attested, is the following devise.

“ I give and bequeath unto my nephew *W. D.* all that my freehold estate that I bought of *W. K.* situate at *Albampton* in the county of *Somerset*, To hold to him during his natural life, and after his decease, to and amongst his issue; and in default of issue, to be divided between my nephew *E. D.* and my niece *M. D.* and to their heirs and assigns, for ever.”

The testator also gave to the said *M. D.* four closes of ground, under the like limitation, to her issue, with remainder to the said *E. D.* in fee.

And likewise gave, to the said *E. D.* two closes of ground, under the like limitation, to his issue, with remainder to the said *M. D.* in fee.

The said *W. E.* and *M. D.* are brothers and sisters. *W. D.* suffered a recovery, before he had issue, but now has issue one daughter.

Query. If *W. D.* had an estate tail, or what estate under this will? and could he, by the recovery, bar the remainders, or what effect will it have?

Opinion. I am of opinion, That *W. D.* took an estate tail by the will; and that by his suffering a recovery, he hath effectually docked the intail, and barred the remainders over, of the premisses devised to him.

May 19, 1768.

W. Rivet.

Mr. Yorke's opinion on the foregoing case.

Opinion. The whole stress of this case turns upon the word *amongst*. If the devise had been to *W. D.* for life; and from and after his decease, to his issue, &c. I should have thought clearly, that *W. D.* would have been tenant in tail, and master of the estate; especially having no children at the date of the will, or death of the testator. But, as it is penned, it may be argued, that the limitations operates by way of contingent remainder to the issue, who will take the lands, by way of issuing jointtenancy for life. And this opinion receives considerable strength from the reasonings in *Wid's case*, 6 Cok.— and

and from the argument of Lord Cowper, in the case of *Coote v. Coote*, 2 *Vern.* 546. However, the judges of the common law, have gone so far of late years to support the general intention of a testator, in favour of the posterity of a tenant for life, who is marked out by devise, as the stem or *root*, of a particular succession, that it is not improbable, in the present case, they may hold *W. D.* to be tenant in tail, and construe the word *amongst*, to carry the land, not to the *issue*, to be enjoyed by them as such, as *joint-tenants*, but *successively*, in such course as the law prescribes *heirs of the body*, to take. I like this construction best, and incline to it; yet think the case not free from doubt; and wish, that the *recovery* had not been suffered, till the point had been cleared up, (as it is something new), by the judgment of a court of law, upon a case made, or on a *special verdict* in *ejectment*.

May 26, 1768.

C. Yorke.

C A S E.

H. *P.* late of *Finhead* batchelor, occupied an estate of six or seven hundred pounds a year, some arable and some pasture, and lived with his brother *J. P.* his wife, five sons, and one daughter; the said *H.* was the master of the whole, and suffered his brother's wife *M.* to be sole mistress of the dairy, and to make and sell the cheese and butter, and take charge of the household affairs; she, sometimes on his purchasing an estate, would bring him 500*l.* which was more than he expended, and she was well known to be a careful mistress of the family. The said *H.* after having made and executed his will, and gave legacies to his nephews and nieces, made his brother *J.* executor and residuary legatee, and died *January 6, 1766*; *J.* proved his brothers will, and made his own will, and gave his wife *M.* only 1*s.* and died *August 18, 1766*, leaving his wife and family in the farms and business, and making his sons (except *H.* the eldest), joint executors.

In *September 1766*, *M.* the Widow, put 300*l.* into the funds, and died within a year, intestate; her eldest son *H.* obtaining letters of administration out of *Doctors Commons*, and is thereby intituled to receive the money. Now his four brothers, who are joint executors of their father's will, think that the 300*l.* were assets and part of their father's estate; and that they, (exclusive of *H.* who administered to his mother's estate), ought to have the 300*l.* equally amongst them; *H.* on the other hand insists, that by the statute of distribution, he ought to claim a distributive share of the 300*l.* equal with his brothers and sister, as of the estate of his mother, who on her death had said, she had the 300*l.* by her some years, that her husband cut her off with a *shilling*, and that the money she had made a reserve of, should go equally amongst all her children. This is told by one woman,

woman, but was never committed to writing. The parties are willing to abide by counsel's opinion.

Query. Whether the 300*l.* shall be deemed the property of *M.* the mother, or her four sons, who were joint executors of the father, exclusive of *H.*?

Opinion. I am of opinion, That this sum of 300*l.* being in the mother's possession and applied by her as her own, must be deemed to be her property, unless it can be proved to belong to her husband, at the time of his death; the burthen of which proof will lie on his executors, and there does not seem to be any evidence amounting to such a proof.

Serjeants-Inn, May 18, 1768.

J. Burland.

C A S E.

ON Saturday the 23d day of *May 1767*, four ewes and five lambs were brought to the *Northchurch pound*, by *R. P.* which had been straying in the parish of *Northchurch*, *two days*, and *B.* the pound keeper, had them cryed on *Monday* the 25th day of *May*, in *Berkhamsted St. Peter*, being market day, and took them out of the pound into his orchard, in the said parish of *Northchurch*, and they lay there till *Wednesday* in the morning, when *J. C.* came to *B.* and told him they were his master *D.*'s then *B.* told him, he might have them, if he would pay the charges; and told him the charges were, *taking up 1s. keeping 1s. withering 4d. crying 4d. and pounding 2d.* if he would take them away then, else there would be more charges for keeping them; then he went away, but returned with another man at *eight* at night, being upwards of *twelve hours* from his first coming, when he asked *B.* if he would let him have them, which *B.* told him he might, if he would pay the money, which was then but *2s. 10d.* *C.* then pulled out his money, and threw down *1s.* in one place, *1s.* in another, and *1s.* in the third place, and told him to take what he would; *B.* then told him, he would not stoop to him, or his master, but if he would give him the money into his hand, he would take it, but *C.* refused, and made many words; *B.* told him, if the sheep were not taken away that night, he would be paid *6d.* more for keeping, and that he would carry them the next morning to the *Duke of Bridgewater's* at *Ashridge*, *C.* after some time, took up his money and went away, and never returned again, and the sheep are now in *Ashridge* park, belonging to his grace the duke of *Bridgewater*, lessee under the crown of the manor of the *Halimote of Northchurch*, parcel of the honor of *Berkhamsted*, and of the dutchy of *Cornwall*, *And also steward and bailiff of the same manor, and by the said lease, intitled to one half of the value of all waifs and strays, arising from the said manor, and the crown to the other half.*—Part of

of *Asheridge* park lies not three miles from *Northchurch* pound.—Afterwards *D.* served *B.* with a copy of a *copias*, but has not declared,

On the 4th of *August* 1767, and not before, *D.* applied to the sheriff of *Hertford*, for a *replevin* warrant, which was granted him, and directed to the constables of *Northchurch* and *W. P.* one of the sheriff's bailiffs or officers, but the sheep being . . . of the parish of *Northchurch*, *D.* has applied to the sheriff for a return that they are *elogned*, which at present the sheriff has refused, being told where the sheep, &c. now are.

It is apprehended, *D.* will apply to get a *writ of withernam*, or else will enter his grace's park, which lies in two counties and three parishes, but not in the parish of *Northchurch*, so that when they come to take the sheep, it may possibly be, that they may be in a different county.

Since the sheep has been in *Asheridge* park, one of the lambs is stolen or strayed, so as not to be found, and one of the sheep is dead of the rot.

N. B. Since the lamb was stolen, the other sheep and lambs have been appraised by proper judges, and a value set on them.

Query 1st. Is the tender by *C.* a good tender; and can *B.* as pound-keeper, under a written appointment, justify the detaining of the sheep and lambs? If he can, must he justify, as servant to the crown, or to the duke of *Bridgewater*?

Opinion. The tender seems to me to be sufficient in the manner of it, and it was a very blameable obstinacy in *B.* in not taking the money, when he might by stooping have had it; the tender appears too to be sufficient in quantity, for *B.* could not, as I apprehend, demand any thing more than for the keeping and calling, though I doubt his right to the latter; and am of opinion, he could not demand any thing for taking up the estray or withering it; and that he cannot justify the detention after the tender.

Query 2d. As the lamb that was lost, was kept in *Asheridge* park, which is paled round, where the rest that are living now are; will *B.* or the duke of *Bridgewater*, or either of them, be answerable for the loss of it, or for the other which is dead?

Opinion. I think he will be liable to answer for the lamb lost, and the sheep dead, because his denial to restore them was a conversion, and the value must be fixed at that time.

C A S E.

Nov. 24, 1737. *W. C.* by his last will (reciting that his younger son *G.* had been abroad beyond the seas for near *two years*, and was supposed and reported to have died abroad or upon the seas; but in case he should be alive and should return to *England*, he thought it convenient to make some provision for him), and therefore gives and bequeaths to his said son *G.* *six messuages* in —— *but, Westminster, To hold* to him, his executors, &c. for such estates and terms as he had therein; but in case of the death of his said son *G.* and not otherwise, he gives and disposes of *three* of the said messuages to his said son *W.* *To hold* to him, his executors, &c. for such estates and terms as he had therein; And his will and mind is, that his said son *W.* his executors, &c. should be in possession of the said *three houses*, and receive the rents to his own use, till the return of his said son *G.* without being accountable to him for the same.

April 4, 1748. *W. C.* the son by his last will, gives, devises and bequeaths, to the governors of the infirmary in the liberty of *Westminster*, the said *three messuages* for the use and benefit of the said infirmary, *subject* to such estates in the leasehold premises, as by the will of his late father, his brother *G.* (who at the time of making the said will, had been gone abroad for near *two years*, and was supposed to have died abroad or upon the seas, and had not since been heard of), might claim therein; and directs his executrix, as soon as conveniently might be, after his decease, to assign the said *three leasehold messuages*, and the lease or leases by which the same were held, unto the governors of the infirmary and their successors, or to such persons as the governors for the time being should appoint for that purpose, their executors, &c. for so many years of the term or terms, as should then to come in the said leasehold messuages, upon the trusts and for the uses aforesaid, *subject* to such claim, and to the claim of his brother *G.* therein as aforesaid.

Query. Whether the bequest of the said houses by the last mentioned will, is within the meaning of any of the statutes of *Mortmain*.

Opinion. I think that the bequest of these leases to the governors of the infirmary, is void by the late act of parliament, to prevent the alienation of lands to charitable uses; for it has lately been determined by the *Lord Chancellor*, on mature consideration, that the disposition of leases of houses or lands, was not only within the meaning but even within the words of the act, which prohibits the settling any interest out of lands, and leases for years are such. And many of the incon-

veniences which were intended to be prevented, would not be avoided, if devises of long terms of years were allowed to be given to charitable uses; for property of this kind could not circulate, and would be locked up for ages, and the statute would be in a great measure eluded.

Lincoln's-Inn, February 20, 1753.

R. Wilbraham,

C A S E.

H. is an hamlet within the parish of *F.* in the county of *Middlesex.*

In 1631 the inhabitants of *H.* at their own expence and for their own convenience erected a *chapel* within the hamlet; but before it was consecrated or opened, an agreement was entered into by the then vicar of *F.* of the one part, and several of the inhabitants of *H.* of the other part, touching the rights of the mother church. This agreement is registered in the bishop of *London's* registry, with the act of consecration, and without which the bishop could not have consecrated the chapel.

The church of *F.* is a very ancient building, and now wants a very large and thorough repair, and the buildings in and about *F.* and with them the inhabitants, having of late years greatly increased, the church really stands in need of an enlargement, so that the inhabitants may be decently accommodated.

On the 30th of *July* 1766, at a vestry held for *F.* pursuant to due notice published in the church on the *Sunday* preceding, it was the unanimous opinion of the inhabitants present, that the pews, and other parts of the church, were in want of considerable repair, and that there was not a sufficient number of seats to accomodate the parishioners, therefore that the church-warden should appoint a proper surveyor to prepare a plan and estimate, and he should give notice to the churchwarden of *H.* side, to employ a surveyor on behalf of *H.* division, to attend with the surveyor on the *F.* side, to examine and report their opinions concerning the repairs and increase of seats.

G. D. jun. was appointed surveyor, and notice of the resolution of this vestry was communicated to the churchwarden of *H.*

On the 30th of *August* 1766, at a vestry held for *H.* It was ordered, that the churchwardens and others should be desired to attend the churchwardens of *F.* and inquire what repairs were proposed. And it was resolved that Mr. *W.* should be appointed surveyor on the *H.* side, to meet the *F.* side surveyor any day that should be convenient to both.

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The surveyors met, and a survey and estimate being made, another vestry was held for *F.* on the 1st of November 1766, pursuant to due notice, to take into consideration the report of the surveyors, respecting the necessary repairs and enlargement of the church. At this meeting a paper, intitled, "An estimate of the expence of the repairs which are absolutely necessary to be done in *F.* church, signed by the three surveyors, and amounting to 1327*l.*" was read.

It was thereupon resolved, as the opinion of the inhabitants whose names were thereunto subscribed, being the major part of the inhabitants at that meeting assembled, that the several particulars of repairs, alterations and erections therein after mentioned, were necessary for the making the said church, as well more decent, as more convenient, for the inhabitants of the said parish. By this resolution some of the particulars pointed out by the surveyors were rejected, and others altered, and the expence upon the whole greatly reduced.

*Query, Are the inhabitants of *H.* liable to enlargement, rebuilding if necessary, and ornaments, as well as repairs; more particularly are they liable to any, and which of the articles in the resolution of the 1st of November last?*

Are they not bound by the resolution formed upon the estimate of their own surveyor?

Should they by dint of numbers out vote the inhabitants of *F.* on any point really necessary, how must *F.* proceed to get their church repaired?

Opinion. The inhabitants of the hamlet of *H.* have by agreement in 1631 made themselves liable to the reparation of the church of *F.* from time to time as they heretofore have been, on account of being allowed to erect a chapel for their ease and convenience; and if they had not so bound themselves, they would have been obliged by law to contribute to all necessary repairs, for this general reason; because it would be unjust, that an easement granted to one part of a parish, by allowing them to have a chapel appropriated to themselves, should in any way become a burthen to the other part of the parish, without whose consent it is to be presumed the permission for erecting a chapel would not have been originally obtained. And I apprehend that the reparation to which the inhabitants of an hamlet, having a chapel, are bound, extends not only to the fabric and to every thing necessary to the preservation of that fabric, but also to the repair or renewal of decayed pews, antient ornaments, surplices, bibles, books of prayer, linen, &c. which may be properly required, for the decent performance of divine service; and such reparation, if wanted, the Ordinary either on view or complaint, or both, may compel the

churchwardens to make by his own authority, even if the majority of a parish, in vestry assembled, should be of a contrary opinion. But a rebuilding or an enlargement of a church or the erection of additional pews, I apprehend can only be effected by a vote of the majority of the parishioners, assembled on proper notice in a legal vestry; and I am inclined to think, that the inhabitants of a chapelry can no more be excluded from the vestry of the mother church, than from the church itself, if they chuse to attend it; and I farther apprehend, that whenever any business is to be transacted in which the chapelry-inhabitants have an interest, the chapelwardens ought to have timely notice of the vestry-meeting given them by the churchwardens, that the inhabitants of the chapelry may attend, if they think it necessary so to do: And, if they should attend, and out vote the inhabitants of the district of the mother-church, I am inclined to think, that the *minority* could have no remedy in respect to rebuilding, an extension of walls, or the erection of new pews upon new sites; but the *Ordinary*, as I observed before, of his own authority, may order churchwardens to do all things, which he finds necessary for the support of the ancient fabric, and for the purpose of performing divine service, and he has also power to enforce his orders upon churchwardens, and to oblige them to make a rate to raise a sum adequate to the repair wanted, upon all the parishioners; who may be compelled by ecclesiastical censure to pay their respective proportions towards that rate, unless any individual can prove himself to have been unequally assed. On the whole therefore if some of the inhabitants of *F.* being joined by those of *H.* should out vote the rest of the parishioners, in every thing now proposed, those of the district of the mother church might nevertheless be relieved, in respect to all repairs really and absolutely necessary, by applying to the bishop of *London's* chancellor, either to take a personal view, or to appoint surveyors to take a view for him, and report what is necessary and immediately wanting for the support of the church, and the decent performance of divine service. And, as to the additional buildings and erections, specified in the estimate, there is no doubt but that a vote for them may hereafter be obtained in vestry, (and of course a faculty,) if the inhabitants of *F.* are willing to take the expence upon themselves, and will declare their intention of not assesting the inhabitants of the hamlet of *H.* towards such new work. But it will be time enough for the inhabitants of *F.* to prove either of the methods by me proposed after they have tried their success at a general vestry on due notice. I do not think that the inhabitants of the hamlet can be bound by any act which they have as yet done.

In answer to the question, whether the inhabitants of *H.* are liable to contribute to any of the articles recited in the resolutions entered into on the 1st of November 1766? I am induced to think, that if the inhabitants of the hamlet should not come to the vestry, or be out-voted, they cannot be obliged to pay for additions; And therefore I apprehend, that they could only be compelled by a majority, to contribute to the new pews, where there were pews before, and of course to contribute towards part only of the third article, and towards the performance of the fifth, sixth, seventh, eighth, tenth, and twelve articles, and part of the ninth; And that on this account, in order to avoid confusion, there ought to be two rates, the one for the repair of the old work only, with an assessment on all the parishioners; and the other for the new work, with an assessment on the inhabitants of *F.* only: I must add however, that I know of no adjudged case in regard to the points last mentioned, and that I take them to be new, and not to have been hitherto judicially determined: I would not however be understood to say, but that a majority of the hamlet inhabitants would bind the hamlet inhabitants in respect to additions as well as repairs.

G. H.

C A S E.

The examination of A. taken upon oath before two magistrates the 17th of June 1767.

THE said examinant saith, That on the 20th day of April 1766, *E.* a clergyman invited him and one *B.* to his house; that *B.* went away about ten o'clock at night, when the said examinant got up intending to go home, but that the said *E.* would not suffer him to go away. That *E.* sat down by him, put his arm round his neck, and called him his dear Tom, and offered to put his hand into his breeches, which the said examinant hindered him from effecting: That the said *E.* unbuttoned his own breeches and shewed his secret parts, put his member into the left hand of the said examinant, who knocked him into his chair with his right hand: That the said *E.* is commonly reputed to be a drunkard and a profane swearer, and that he has heard the said *E.* swear by his Maker many times.

The examination of B. taken upon oath before two magistrates, the same day and year aforesaid.

THIS examinant saith, That *E.* a clergyman is reputed to be a drunkard and a profane swearer, that he hath seen him drunk several times, and heard him swear profanely by his Maker, &c. That in the

the beginning of *May 1766*, the said *E.* invited this examinant into his house, and entertained him with punch, that about *twelve* of the *clock at night*, when they were in the parlour together, the said *E.* took up a glass of punch and pronounced two obscene words as a *health to be drank*, that he this examinant was much offended with his indecent behaviour: That the said *E.* called him his dear, and endeavoured to put this examinant's hand into his the said *E.*'s breeches: That the said *E.* put his hand into this examinant's breeches in the parlour in a forceable manner when he was going out of the room and got hold of his member: That he this examinant called him a *buggering devil*, and told him that he was fitter for the gallows than for the pulpit: That the said *E.* followed him to the stable, where this examinant told him, that if he did not keep off him he would stick him.

The examination of C. taken upon oath before two magistrates the day and year above written.

THIS examinant saith, that *E.* a clergyman is a lewd man addicted to drinking and profane swearing, That the said *E.* invited him this examinant to his house in *April 1766*: That he dined and supped with him and continued there all night: That two gentlemen his guests being gone to bed, the said *E.* tampered with this examinant as if he had been a young woman: That he invited this examinant to have gone to bed with him, tha the put his member, into this examinant's hand; and this examinant saith, he verily believes that the said *E.* would willingly have committed a detestable and unnatural act on him, in case this examinant would have consented to it.

Query. Please to peruse the above examinations, and then give your opinion, whether the abovenamed *E.* may not be bound to his good behaviour for the above offences? And whether an indictment will not lie against the said *E.*? And whether he may not be punished, and how, and in what manner in the *Ecclesiastical courts*? And upon the whole, please to give your opinion, what method will be most eligible to be taken against the said *E.* so as most effectually to punish him for the above vices?

Opinion. The behaviour of *E.* stated in the examinations is such as will, in my opinion subject him to prosecutions both in the *temporal* and *spiritual* courts; for I conceive the attempts above stated, are breaches of the peace, and he may be bound to his good behaviour: *And also* may be indicted for an assault with an intent to commit *sodomy*; And he may also be proceeded against in the *spiritual court* for profaneness, drunkenness, and immorality, and be deprived of his benefice, and all these proceedings do not seem to me to exceed the enormity of his offences.

Brampton, Oct. 17, 1767.

Ja. Wallace.
Opinion.

C A S E.

June 7, 1759. **U**PON an appeal to the commissioners, from a charge made by the surveyor of the windows, the following case is stated at the request of the surveyor, pursuant to the directions of the act of parliament.

The appellant is by the assessors of the parish, charged with *twenty-three* windows or lights; by the surveyor he is charged with *twenty-five* windows or lights. To which surcharge of the surveyor the appellant has appealed to the commissioners, and saith, he hath but *twenty-three* windows or lights; for that the windows or lights, above or on each side the door to the entrance of the house, should only be computed as one window or light, for that both those windows or lights, on each side the door, were within the space of *twelve inches* from the window or light above the door: upon which appeal the commissioners were of opinion, that they should be deemed as one window only. The surveyor on the other hand, suggested, that the *twelve inches* allowed by act of parliament had only relation to windows or lights in *one frame*, which was not the present case; for all the *three* windows or lights, were in *separate frames*, and a doorway or entrance into the house was between *two* of the windows charged. And although the windows above the door was within *twelve inches* of the other windows on each side; yet it could not be within the intent and meaning of the act of parliament, that they should be charged only as *one* window or light; for if the window or light above the door was stopped up, there would not then remain any doubt, but that the windows or lights on each side of the door must be charged as separate windows or lights: We therefore, the major part of the commissioners present at the said appeal, at the request of the surveyor, have stated and signed this case; and humbly submit it to your lordships opinion, whether the said windows or lights should be charged as *three* windows or lights, or as *one* window only.

J. W. Mayor.
R. W. W. B.

Opinion. We are of opinion that the judgment of the commissioners is mistaken.

Serjeant's-Inn, June 28, 1760.

Mansfield.
J. Willes.
T. Parker.
M. Foster.
E. Clive.

C A S E.

E. S. by her will dated the 4th of May 1733, and codicils thereto, makes the following bequests, viz.

“ I give

“ I give towards the support of the infirmary, 500*l.* ”

“ I give to the governors of *Bethlam* hospital, for the use of
“ the incurables of the said hospital, 500*l.* I give to the go-
“ vernors of any other hospital that shall be erected for other
“ incurables in *three years* after my decease, the same sum of
“ 500*l.* ”

“ I give to the infirmary in *Westminster* the sum of 500*l.* and
“ I give 300*l.* more to the use of any incurables if there
“ shall be any ward erected or built for such a charity, in *thru*
“ *years* after my death.” ”

The said *E. S.* died about *Christmas* 1734, and *N.* her executrix
soon after proved her will, and in *August* 1735, paid to the treasurer
of the infirmary the above legacies of 500*l.* and 200*l.* and the 16th
of *January* last, she paid to the said treasurer the legacy of 300*l.*
given for the use of incurables.

The first benefaction given to the infirmary for incurables, was
upon the 20th of *November* 1734, and about the 26th of *March* 1735,
one incurable patient was admitted on that fund, and as the fund has
increased, they have from time to time admitted more incurable pa-
tients, but no particular ward was appointed for receiving those pa-
tients till about the 2d of *February* 1736, when a house was taken
for that purpose.

No other hospital for incurables has been erected since *E. S.*’s death,
but that of the infirmary.

Query. Whether the said infirmary is entitled to the above legacy
of 500*l.* there having been a house or ward taken for the
use of incurables within *three years* after the death of the
testatrix?

Opinion. The clauses are so differently penned, that I think the
infirmary is not entitled to the 500*l.* and I think it more ad-
visable for them in all views to leave it to the generosity of
the executrix, than to sue for it.

Though no house was taken or ward actually erected for incur-
ables, yet incurables were received into a proper apartment of the in-
firmary and provided for, therefore

Query. Whether the executrix would not be obliged to pay inter-
est for the legacy of 300*l.* from the death of the testatrix,
or from any other, and what time; and if the infirmary are
entitled to the 500*l.* for incurables, will they not likewise be
entitled to interest for that legacy, and from what time?

Opinion. I think the executrix is not bound to pay interest for the
300*l.* before the ward was particularly appointed for incur-
ables, but from that time she is.

March 11, 1737-8.

C A S E.

THE Reverend Mr. E. H. one of the fellows of *Winchester College* com. *Southampton* by will dated the 5th of *August 1580*, DID, long many other legacies, give and devise as follows, *vix.*

“ITEM I will that there be 20*l.* by the year paid out of all my lands in *Lytle*, in the county of *Southampton* which I lately purchased of *Thomas Dearinge* of *Lytle* aforesaid, Esq; for and towards the exhibition, and finding and providing of four of my next kindred, of the name of *Hodson*, at a grammar school or at any university, that is to say, to every of the four five pounds by the year: And further I will, that if there shall not be four males of the name of *Hodson* descended from *Thomas Hodson* of *Haughton*, in the county of *Stafford*, my great grandfather: Then I will that the same 20*l.* by the year, shall be paid out of my said lands unto ten poor scholars, at the direction of the warden and bursar of *St. Mary's college* for the time being. And whereas the said Mr. *Dearinge* holds of me the same lands in *Lytle*, by indenture of lease for many years to come, Yielding and paying the foregoing yearly sum of 20*l.* unto me, my heirs and assigns, with a covenant therein contained, that if he the said *Thomas Dearinge*, his heirs or assigns, do well and truly content and pay unto my heirs, executors, or assigns, the sum of 320*l.* of lawful money of *Great Britain*, at a certain day and place therein limited and appointed, that then the same lands are to be reassured and conveyed back again unto the said *Thomas Dearinge*, his heirs or assigns, as in and by the same indenture of lease more at large appears; I will, that if the said sum of 320*l.* be well and truly contented and paid, according to the purport and true intent and meaning of the same indenture of lease, that the said sum of money shall be employed and bestowed, at the discretion of my executors, with the aid and assistance of my overseers, for the purchase of some lands or rents, to the yearly value aforesaid, to be given towards the exhibition and finding and providing of scholars as aforesaid, according to the true intent and meaning of this my last will. And I will, that all the evidences and writings concerning my said lands in *Lytle*, shall be delivered unto the warden and the bursars of *St. Mary's college* aforesaid for the time being, by inventory indented, made between the said warden and bursars and my executors, to be safely kept by the said warden and bursars, to the use aforesaid, together with a true copy of this my last will: And my will is that *Richard Hodson*

" *Hodson of Masseware*, in the county of *Bucks*, my kinsman,
 " and the heirs male of his body lawfully begotten; and for
 " default of such issue, to *Thomas Hodson of Murseley*, in the
 " said county of *Bucks*, and the heirs males of his body, law-
 " fully begotten; and for default of such issue, then to the heir
 " male of the body of *Robert Hodson of Winchester*, my third
 " brother lawfully begotten, shall have the letting and setting
 " of my said lands in *Lyffe*, and the receiving of the rents, issues,
 " and profits thereof; and that my heirs, and such as are to
 " have my said lands in *Lyffe*, by virtue of this my last will
 " and testament, shall, before they receive any rent therefrom,
 " enter into *recognizance* in the sum of *400l.* unto the warden
 " and bursars of *St. Mary's college* aforesaid for the time being,
 " make a true and perfect account of the said sum of *20l.* by them
 " given and distributed towards the exhibition and finding of Schol-
 " lars, according to the true intent and meaning of this my last
 " will, in the *Whitsun-week*, or within six weeks after, once in
 " three years at the *uttermost*; and shall bring certificates and
 " letters testimonial, unto the said warden and bursars for the
 " time being, from such scholars of my blood and kindred as
 " have received my *exhibitions* at their hands, and shall yield
 " up the same account in writing, to be laid up together with
 " the evidences of my said lands, and shall forthwith give
 " unto the warden for the time being *6s. 8d.* and to every
 " of the bursars *3s. 4d.* and I will, that my executors pro-
 " cure my heirs, and such as are to have my said lands
 " in *Lyffe*, and the receiving of my rent of *20l.* by the year,
 " given towards the *exhibition* of scholars as aforesaid by
 " order of the court of *Chancery*, to perform and fulfil
 " this my last will, touching the said *20l.* by the
 " year given towards the finding of scholars as aforesaid, the
 " which if they refuse to do, my will is, that they shall lose
 " all such benefit as they are to have by virtue of this my
 " last will, touching the said *20l.* by the year given by me
 " towards the finding of scholars as aforesaid, as they will
 " answer to the contrary before the judgment seat of God
 " when the secrets of all hearts shall be revealed; and made
 " his kinsman *R. H.* and *T. H.* executors of his said will;
 " and ordained, made and appointed *T. L. Clerk*, and *J. C.*
 " Clerk, Overseers thereof."

In *Easter Term 1676*, *T. H.* and *J. H.* infants by *W. H.* their fa-
 ther and guardian and several others of the name of *H.* exhibited
 their bill in the High Court of *Chancery*, against *T. H.* Esq; Sir *J. F. Knt*, *R. G.* Esq; and *T. B.* defendants, thereby setting forth the will
 of the said *E. H.* And that the testator *E. H.* being dead, the said *R. H.* his executor, received great benefit by the said will; And also the
 said *320l.* for the redemption of the said land. And that the said
R. H. by his will dated the 5th day of *August 1597*, gave to his son
 E.

all his lands, and willed and charged him that he and his heirs, for
 and out of the said lands, in all things ever should do, observe and
 perform the said will of the said *E.* deceased, according to the true
 intent and meaning thereof, concerning the said annual sum. And
 that *R. H.* being also dead, the said *E.* his son and heir, taking the
 benefit of the will, and entering on the lands by his father's will to
 him devised by indenture, dated the 24d of November 1626, conveyed
 the said lands therein particularly mentioned, charging them or in-
 tending to charge them with all the said payments and performances,
 according to the said *E.*'s will, unto one *J. N.* Esq; his heirs and as-
 signs for ever. And that the said *J. N.* gave all and singular the
 said lands, *subject* to the said annuity, with his daughter in marriage,
 a part of her marriage portion, to Sir *J. H.* his heirs and assigns,
 for ever. And the said Sir *J. H.* by his last will, devised the same
 lands, charged as aforesaid, to his son the defendant, *T. H.* and his
 heirs for ever, and constituted the defendants Sir *J. F. R. G.* and *T.*
E. Esqrs. his executors, *In trust* to pay the said annual sum, and to
 enter into the said recognizance. And that the said Sir *J. H.* dying
 ten years before the said bill was exhibited, the defendants have re-
 ceived the profits of the land to near the value of 600*l. per annum*, to
 the use of the said *E.*'s will, but refused to pay the said 20*l.*
annum, or any part thereof, according to the plaintiff's will, and per-
 form the said wills and indentures, although ever since the death
 of the said Sir *J. H.* the plaintiffs some *four* or other of them had
 diligently continued resident at some school or schools, university or
 universities, according to the said *E. H.*'s will, and the other
 land indenture aforesaid, they therefore demanded the annual sum
 and the arrears thereof, from the death of Sir *J. H.* which was the
 2d of June 1668, to the 24th of June 1674.

On the 18th of June 1677, *It was ordered and decreed*, that the
 lands at *Mursey* in the county of *Bucks* formerly belonging to
 son of *R. H.* who afterwards sold them to the said *N.* and
 belonging to the defendant *Mr. H.* should stand chargeable
 to the payment of the exhibition of 20*l. per annum*, for
 ever, according to the said will of *E. H.* And that the same should
 then after be paid half yearly, to wit, on the 15th day of *April*,
 and 19th of *October* in every year, at or upon the premises afore-
 said, the parties that should so come to receive the same, producing
 sufficient certificates, and well witnessed, of such persons being well
 entitled to the same on whose behalf they shall to come.

And it was further ordered, that Sir *A. H. Knt.* one of the masters
 of this court, should look into the pedigrees, and see that the plain-
 tiffs were entitled under the same, and also well qualified to receive
 the said exhibition then due; and as oft as fewer than *four* of the
 plaintiffs claim the said exhibition, that is to say if *three*, *two*, or *one* of them
 claim, for any one at a time might claim and were capable to receive
 the same: Then for such time so many of them as claimed should

have yearly every of them 5*l.* a piece. And that the said plaintiffs and defendants should proceed to an account before the said master touching the said arrears of the said exhibition. And what arrear the said master should certify due to the plaintiffs respectively or any of them. *It was also further ordered and decreed*, that the defendant Mr. *H.* or other defendants on his behalf should pay accordingly, and for their so doing, the said defendants all and every of them should be thereby, and by the decree of this court protected and saved harmless.

And it was further ordered and decreed, that when and as often as there should want of the full number of four to have the said 20*per annum*, such person and persons, then to be admitted to make up the number, should first attend the said master and make it appear before him to his satisfaction, by *affidavits* or otherwise, as he should think fit, that such person or persons, were rightfully entitled under the pedigree aforesaid, and also sufficiently qualified to receive the said exhibition, on whose certificate thereof, the said defendant Mr. *H.* or any other person or persons under him, claiming the premis chargeable with such exhibition, should accordingly pay the same and upon their paying the same according to such certificate, from time to time, should be by this decree, well and sufficiently saved harmless and indemnified in so doing.

And it was thereby declared, that in making up of the said number of four qualified to receive the said exhibition, such of the kindred of the said *E. H.* the deviser ought to be preferred before others as should be of the age of *eight years* and under, of the degree of *Master of Arts*, and nearest of kin to him the said *E. H.* the first donor. And to the charges of this suit which had been borne and sustained, by *and* *J.* sons of *T. H.* of *H.* in the county of *Stafford*, it was thought reasonable, and the consent of the said plaintiffs further ordered that every of the next of kin of the *H.* that should then after be admitted to the said exhibition, should upon such their admittance, pay unto the said *T.* and *J. H.* the said sons of the said *T. H.* or either of them, their executors, administrators, or assigns, the sum of 4*l.* piece, for and in respect of the charges aforesaid.

And for as much as there were certain depositions taken in the court in the year 1658, in a cause where *W. H.* and others by the guardians, were plaintiffs, against *J. H.* and others defendants, who concerned the matters and pedigree in question; *It was further ordered*, that the said depositions should be used as evidence in the cause before the said master as effectually as if they had been taken in this cause.

The 3d of July 1667, the master made his report, and certified that the plaintiffs were well entitled to the exhibition of 20*l. per annum*, and annexed a pedigree to his report of the family of *H.*

The said report was confirmed by the court, and directions given for paying the said exhibition according to the said decree.

The warden and bursars filed their bill in this court against *T. H.* Esq; Sir *J. F. Kn.* *R. G. Esq*; and *T. B. Gent.* And the substance of the plaintiff's bill appeared to be, that *E. H.* in *August 1580*, made his will in writing, and thereby (*inter alia*) bequeathed to *four* of the next of kin, and name of *H.* *20 l. per annum*, to be equally divided amongst them, so long as they should continue at a grammar school or any university. And for want of *four* of that name, or any of them, such part so wanting, should remain to the warden and bursars of the said college, to be disposed of among *ten* poor scholars, at their discretion, which annuity was afterwards charged on lands in *Mursey* in the county of *Bucks*, lately belonging to Sir *J. H.* deceased.

And the said bill further sets forth, That *L. H.* one of the *four* persons that received the exhibition, about the 29th of *August 1670*, died, so that for *six years* afterwards, there were but *three* that were entitled to their parts of the *20 l. per annum*, who received it, and the other *fourth* part was then due to the plaintiffs as aforesaid, which comes to *39 l.* being for *six years* to *1671*. And Sir *J. H.* being dead, the premises are descended to the defendant *H.* his son, Sir *J.* having made his will, and the other defendants executors thereof, who ought to pay the said *39 l.* but the said defendants the executors, scruple to pay it, doubting whether they can safely do it, without the order and protection of this court, and forbear payment thereof, whereby the plaintiffs cannot discharge their trust in disposing of it as is directed, so that the defendants may be ordered to pay the plaintiffs the *39 l.* that so they may be enabled to perform their trust, is the scope of the bill; Whereto the defendants, by answer confess, that it may be true that *E. H.* made such will, and gave such exhibition, chargeable on such lands, as in the said bill is set forth, and acknowledge such lands are come to the defendant *H.* and believe there is *39 l.* unpaid of the exhibition for the fines in the bill, for the reasons therein contained. And the defendants Sir *J. F. R. G.* and *T. B.* acknowledge they are executors of Sir *J. H.*'s will, and that the same is proved; And confess they are advised not to pay the money without the order of this court; but if this court shall think fit, that the said *39 l.* shall be paid to the plaintiffs, the said defendants are ready to submit to the judgment of this court, they being protected thereby. This court thereupon, and upon debate of the matter and hearing what was alledged on either side, do think fit, and so order and decree, that the said defendants do pay the *39 l.* aforesaid, unto the plaintiffs, to be by them disposed of according to the will of the said donor. And the said defendants in paying the said money as aforesaid, are protected and saved harmless by this present order and decree against all persons that shall or may claim the same.

On

On the 12th December 1766, The agent of J. S. Esq; (the present owner of the estate) delivered in an account of monies admitted to be due to the college from *Holy Thursday* 1747, to *Holy Thursday* 1758, by which there appears to be due to the college, the exact sum of 100*l.* And by an account taken from *Holy Thursday* 1758, to *Holy Thursday* 1766, the further sum of 58*l.* 15*s.* making together the sum of 158*l.* 15*s.*

The college of *Winchester* calling on Mr. S. for payment of the said 158*l.* 15*s.* he objects thereto, unless the college will allow the land tax for the respective sums due to them in each year, which the college have declined doing, as the same has never been allowed by them, and as the payment of the 20*l.* a year was to be an entire sum out of the estate: And the college conceive they ought to be allowed interest for the money due to them from the end of every *three years* being the time appointed by *E. H.*'s will, for the settling accounts and paying the balances.

Query, Whether Mr. S. has a right to deduct the land tax for the money due from him to the college?

Opinion. In general, estates given to charities contribute to the land tax as well as other estates; but as the land tax act says, that the act shall not extend to charge any *scholars* or *exhibitions* of *Winchester*, (amongst other colleges), or any *reader*, *officer* or *rector*, in respect of any *stipend* or *exhibition*; and as these *exhibitions* come within that description, I conceive, they are not liable to contribute to that tax.

Query, As Mr. S. has not delivered to the college any accounts at the end of every *three years*, as directed by *E. H.*'s will, can the college compel him to pay interest for all such sums of money as are due to them, from the end of every such *three years*?

Opinion. I think there have not been such measures taken, as will entitle the college to interest, I do not perceive that any *recognition* has been given, or that the college has ever demanded any account. The other now comes from the owner of the estate. The balance is uncertain, it does not appear what reasons have prevented the account before, or have produced it now: And I see that neither the decree of 1674, nor that of 1678, has given interest for the sums then due.

July 28, 1767.

William De Grey.

C A S E.

IN the name of GOD Amen. I E. G. of Shepton Mallet, in the county of Somerset, stocking-maker, being firm of body and of perfect memory, DO ordain and make this my last will and testament, this 17th day of February, anno 1723, revoking all former wills and testaments ever by me made or declared, *viz.* And first I command my soul into the hands of the Almighty God my creator, and Jesus Christ my redeemer, and my worldly estate as followeth: *And whereas,* I am seized in fee simple of a messuage and tenement, called Wookey's Tenement, in the parish aforesaid, which tenement I give and bequeath unto my sister E. for her natural life, paying unto my heirs hereafter mentioned, the yearly rent of five shillings: And I give unto my sister K. P. ten shillings: *Item,* I give all my goods and chattels unto my brother R.'s children then living, equally to be divided betwixt them. *Item.* All my lands I am now possessed of in Shepton Mallet, I give, devise, and bequeath, unto my nephew S. G. whom I make whole and sole executor of this my last will and testament.

E. G.

Signed, sealed and delivered, }
in the presence of us }

J. P. J. B. A. B.

The messuage called *Wookey's*, devised to the testator's sister E. is a small part of his estate, and the other part consists of lands, which E. G. the heir at law of the testator claims, insisting on S.'s interest to be only an estate for life. Some part of the lands belong to the messuage called *Wookey's*, and other part are a distinct property.

Query, To whom does each, belong, (*S. being dead,*) whether to his heir at law, or to the testator's sister?

Opin'n. I am of opinion, that S. took the lands in Shepton Mallet in fee simple, with the reversion in fee of *Wookey's Tenement*, expectant on E.'s estate for life. The five shilling rent is directed to be paid by E. to S. as the heir aftermentioned. This shews that he meant the inheritance to S. and his heirs. He is also made whole and sole executor.

Aug. 12, 1767.

C. Yorks.



C A S E.

C A S E.

MR. *H.* and *J. B.* Esq; as his surety gave their bond to Mr. *V.* for 700*l.* or thereabouts.

Mr. *V.* afterwards became indebted to Mr. *H.* in the sum of 90*l.* for goods sold and delivered.

Mr. *V.* being indebted to Sir *S.* and Sir *T. F.* in a larger sum than the money secured by the bond, assigned over this bond to them as a security towards satisfaction of their debt.

Mr. *V.* lately became a bankrupt, and Sir *S.* and Sir *T. F.* are the assignees under the commission.

You will observe that *V.* is indebted as above to *H.* in 90*l.* but is indebted to Mr. *B.* the surety in no money whatsoever.

Query. Can Mr. *H.* set off the 20*l.* towards payment of what was due on the said bond, or must he and his surety the said Mr. *B.* pay the said Sir *S.* and Sir *T. F.* as assignees of the said *V.* before he became a bankrupt, the whole of the money secured by the bond, so as to leave *H.* without any remedy as to the said 90*l.* otherwise than by proving his debt and taking his dividend under the said commission?

Opinion. If this be a joint and several bond, so that *B.* alone may be compelled to pay the whole, in an action at law; I see not how the set-off can avail him, without resorting to a court of equity, where, in as much as *H.* was the principal debtor, and Mr. *B.* only his surety, and the estate of *V.* and all claiming under him is indebted to *H.* in 90*l.* I am of opinion an allowance would be made by way of set-off for the 90*l.* so due to *H.* and as power is given to the commissioners by *stat. 5 Geo. 2. cap. 30. sect. 28.* to adjust and balance mutual accounts, I think that on Mr. *H.*'s application to them, disclosing the above circumstances and offering to pay the balance, that they will order accordingly; or if they decline it, that the *Lord Chancellor* would grant relief in a summary way by petition.

Lincoln's Inn, June 30, 1767.

Francis Filmer.

C A S E.

C A S E.

MESSRS. H. S. and J. S. have lately purchased in *fee*, ALL that manor or reputed manor of *M.* in the county of *S.* with the rights, members, and appurtenances thereof, together with all and singular *court-leets*, *court barons*, *view of frank-pledge*, *prquisites and profits of courts*, *waives*, *estrays*, *goods and chattels of felons and fugitives*; and several messuages, cottages, farms, lands, tenements, meadows, pastures, feedings, commons, common of pasture, ways, easements, waters, watercourses, trees and underwoods, with the ground and soil thereof, free-warrens, fish-ponds, fish-pools, fishing-places, royalties, franchises, liberties, profits and rents of all sorts, commodities, emoluments, hereditaments, and appurtenances whatsoever to the said manor belonging.

There has always been for time immemorial, annually paid at the *court-leet* held for the same manor, *certain rents called tything-waits* which have been collected on the inhabitants of the several tythings lying within the said manor, amounting to certain distinct sums on each tything, by the tything-men thereof, and other rents called *moor-rents*, time also immemorial collected and paid at the *court-leet* by *grafs-hayward* out of of three the tythings belonging to the said manor, for and in respect of the rights of common, the cottagers and other the inhabitants within the same manor used and enjoyed, which rents have been collected by the *grafs-haywards*, and paid to the lord or steward, at the *court-leets*; and it has been also the immemorial custom of the tything-men, and the *grafs-haywards*, to collect more out of the respective tythings than is due, claimed, or received, by the lord of the manor, part of which has been paid to the *sheriff's-tourn*, and the residue, (after-paying the lord his usual rent), has been retained by the tithe-men; the lord of the manor no ways ever interfered in assessing the *quantum* to be paid by each cottager or estate, but has been always collected, according to an old list by the tything-men, in respect to the *tything-waits*, and the *grafs-haywards*, in respect to the *moor-rents*.

Several estates lying within the several tythings of the manor, *As also* the three tythings usually paying the *moor-rents* have been sold off by several preceding lords in *fee*, discharged from all incumbrances whatever, *except annual fee-farm-rents*. The said Messrs. H. S. and J. S. have sold off estates in the same manner; but these estates sold off by these antient lords, have paid for a great number of years to the tything-men and *grafs-haywards* their usual and proportionable parts towards the said rents, till within these *two years*, who now say, that by certain covenants in their title-deeds they are discharged from the same.

Query. As these rents called *tything-waits* and *moor-rents* for the major part have been paid by the proprietors of the land so sold off, according to their proportionable parts as assedged by the *tything-men* and *grafs-haywards* towards these rents above twenty years last past, though discharged in the conveyances from all incumbrances except annual *fee-farm-rents*, as have also the owner of the estates sold off by the said Messrs. *H. S.* and *J. S.* after the same manner, will those estates formerly sold off by the former lords, be chargeable and liable to pay their usual proportions, towards the said rents, and will the other lands sold off by the said Messrs. *H. S.* and *J. S.* be also chargeable with their proportionable parts? If so, what proceeding at law would be most adviseable to be taken to oblige them to pay the same?

Opinion. These payments called *tything-waits*, are I apprehend what is called the *certum letæ* or *common fine* usually paid in many *leets* to the lord, and where they are regulated and apportioned according to the value of the estates, and the proportions so anciently adjusted and paid by the owners or occupiers of the respective tenements, I see no reason why they may not be discharged by the lord, upon alienation of the freehold of the tenements, or by release to the owners. For the payments are in idea of law, founded upon the expence the lord, in ancient times was at, in procuring the grant of the *leet*, and being regulated by the estates, there is no reason why they may not be discharged. The reason holds much stronger in respect of the *moor-rents*, which are payments for depasturing the cattle kept on the tenements on the waste, and which the lord seems by such conveyances, to indulge the free use of, without any *fee-farm rent*. Therefore it seems to me, that the purchasers of the manor will have very little chance to recover those payments against such strong words in the conveyances, especially the late one. However as to those of long standing, where the payments have, notwithstanding such words in the conveyances been continued, it may be an argument of some weight, that the continuation shews that these payments were not meant to be extinguished, but on the other hand, I fear it will be very difficult to get over it.

The strongest circumstance for the lord is, that part of these payments is rendered to the sheriff, but the answer to that is, that the lord might discharge what was due to him, though not to the sheriff, so that part may still be payable, though the other is discharged.

As to the remedy (if these gentlemen are willing to bring the matter in question), it is not stated, whether there has been an usage to distrain, without which I think, at least for the *tything-*

tything-waits, a distress cannot be taken, for they are considered in point of law, as against common right; but an action of debt may be maintained: *And also* if they are presented at the court, that they ought to make such payments, and are amerced for not paying them and the *amerciaments* affeered, which presentment of the present sums, amerciaments, and affeements, must be distinct, I think the *amerciaments* may be distrained for, but the distress cannot be sold.

April 27, 1761.

H. Gould.

C A S E.

MESSRS. H. S. and J. S. have purchased in *fee* all that manor, or reputed manor, of *M. &c.* (as in the foregoing case).

In the memory of man no distress has been made on persons refusing to pay their *quota's*, a bill in the *Exchequer* was once preferred against an inhabitant, on that account, who soon complied, by paying debt and costs.

Query. As these rents called *tything-waits* and *moor-rents* for the major part have been paid by the proprietors of the lands so sold off, according to their proportionable part as affeised by the *tything-men* and *grass-baywards*, towards these rents above *twenty years* last past, though discharged also in the conveyances from incumbrances, *except the annual fee-farm rents*, as have also the owners of the estates sold off by the said Messrs. H. S. and J. S. after the same manner; will those estates formerly sold off by the former lords, as those sold off by the said Messrs. H. S. and J. S. under the aforesaid predicament, be liable to pay towards the said affeements as before they usually did? If so, what proceeding at law would be most adviseable to take, to oblige them to pay the same?

Note. If Mr. Burland should be of opinion, that these rents or fines are recoverable, Messrs. H. S. and J. S. are determined to put the same under his conduct.

Opinion. If the proportions paid by each articulare estate towards the *tything-waits* and *moor-rents* were certain and distinct, and the conveyances in *fee* from the lord of the manor *free from all incumbrances*, were all modern, I should be of opinion, that by such conveyances the grantees would have a right *To hold* their lands discharged from those payments; but as the greatest part of these conveyances are ancient, (some, as appear by the state of the other cases herewith left, more than *100 years ago*), and these payments have been constantly made ever

since, until the present dispute began, I am of opinion, that they cannot be considered now as having been discharged by those general words of *exemption from all incumbrances*, but that the long course and series of payment that have been made ever since these conveyances will be sufficient evidence of the lord's right. I don't indeed understand by what tenure the lands were held before they were conveyed in *fee* to the several tenants; if by lease, no such payments could be due but by reservation, and then when the leases determined, the payments would determine likewise; if by copy of court roll, they were due by custom, and then a grant of the land in *fee simple* would, I think, destroy that custom, but still I think, the constant payments, especially where a part of the money collected is for other uses than the lords, will establish the right, and raise a presumption of some other deed on the part of the grantees, undertaking and granting to pay these sums notwithstanding the alteration of their tenure. The best way to recover these rents is to prevail on the *leet-jury*, if possible, to present and *amerce* the several *tything-men* and *grafs-haywards* for non-payment of their respective *waits* and *rents*, and then to distrain or bring an action of debt for the *amercement*, or otherwise to file a bill in the *Exchequer*, against the several landholders, to account for the sums they ought to pay, for I apprehend it will be difficult to ascertain the proportions of each tenant, due to the lord, so as to maintain an action of debt.

Serjeant's Inn, Nov. 27, 1767.

J. Burland.

C A S E.

THE lords of the lordship or manor of *M*— having (ever since it was granted by King *James* to Lord *M*.) always kept a *court-leet* where the constables of the hundred are chosen, and *tything-men* for seven *tythings*, and there always was, time immemorial, a custom for the said *tything-men* to pay into the hands of the steward in open court, certain sums of money by them collected in their respective *tythings* by a rate kept among themselves, and not by the lord or steward in the name of *tything-waits*; and in three of the said *tythings* other monies were paid by the *grafs-haywards* in the name of *moor-rents*, and by them collected as the others, in their respective *tythings*, namely *M*—, *H*—, and *H*—.

	Tything-waits.			Moor-rents.		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Martock</i> pays	—	—	0 15 0	0 17 4		
<i>Henton</i>	—	—	1 0 0	0 18 4		
<i>Hurst</i>	—	—	0 17 0	0 10 0		

Lord *M.* in his life time sold off part of the said manor in *fee* with the lord's rents, then afterwards sold the residue of the said manor to *S.* Esq; who sold off more of it in *fee*, but always received the said *tything-waits* and *moor-rents* of the said courts, then *S.* sold the residue of the said manor, with the privileges and perquisites of courts, &c. to *B.* who sold off more of it in *fee*, but he still received the said *moor-rents* and *tything-waits*, Mr. *B.* sold the said manor, or reputed manor, or residue thereof, together with the *court-barons*, *court-leets*, *view of frank-pledge*, *perquisites*, and *profits of courts*, &c. to the said *H.* *S.* and *J.* *S.* the present lords, *Anno 1759*, since which purchase, several persons who always paid their respective shares towards the said sums in the *tybings* of *M*—, *H*—, and *H*—, now refuse, on pretence that their lands were conveyed by the preceding lords of the said manor, without any rents reserved.

Query 1st. Is the said money to be recovered in law or equity; if so, who is to be sued, the officers for not paying it into court, or the persons that refuse to pay them? The jury of the *court leet* have frequently refused to make the proper presentments relating to the premises, and it is supposed will persist in such refusal.

Query 2d. Is there any remedy against the jury on the above-mentioned account?

Opinion. I think, that the said monies are recoverable by law; and the proper method for enforcing the payment thereof seems to be, for the steward of the court to fine the jury, who shall refuse to make the proper presentments, or (if such presentments be made), to fine the said officers, if they refuse to pay the sums; (which said fines must be imposed on the said jurors and officers, not jointly but severally): And I apprehend, that the lord may afterwards distrain for such fines, or bring an action at law for the same, at his election.

Dec. 10, 1762.

G. Andrews.

C A S E.

C A S E.

S. B. and **J. B.** under the will of their father, were seized in *fee tail general* of the equity of redemption of messuages and lands in **B.** subject to a mortgage in *fee* made by him for 400*l.*

S. married, and in 1766, she, with Mr. **T. B.** her husband, levied a fine and suffered a recovery of an undivided moiety of the said premises, to the precipice of which recovery, a tenant was made by lease and release, with the concurrence of the mortgagee, and by the fine levied by the said **B.** and his wife; and the uses of the said recovery, were by the said release declared.

To the use of said mortgagee and his heirs, for the better securing 200*l.* with interest. And after payment thereof,

To the use of the said **T. B.** the husband for his life, without impeachment of waste.

To the use of trustees to preserve the contingent uses and estates, &c.

To the use of the said **S.** for life, without impeachment of waste.

To the use of trustees to preserve the contingent uses and estates, &c.

To the use of such son, or sons, daughter, or daughters of the said **T. B.** by the said **S.** his wife, for such estate or estates, in *fee-simple* or otherwise, and in such manner and form as they by deed should direct, limit, or appoint; and in default thereof,

To the use of all and every the son, or sons, daughter, or daughters, for such estate or estates, in *fee-simple* or otherwise, and in such manner and form as the survivor should by deed or will, direct, limit, or appoint; and in default thereof,

To the use of all and every the son, and sons, daughter, and daughters, their heirs and assigns for ever, as tenants in common, and not as joint-tenants, if more than one, and if but one, then *To the use of* such only child, his or her heirs and *assigns*, for ever; And if no such child or children should be living at the time of the death of the survivor of them the said **T.** and **S.** then *To the use of* such person, or persons, for such estate or estates in *fee-simple* or otherwise, and in such manner and form as the survivor should by deed or will, nominate, direct, limit, or appoint; and in default thereof,

To the only proper use of the right heirs of the survivor for ever.

A power is reserved for the persons entitled to the equity of redemption for the time being, to raise money by mortgage or sale, to pay off the 200*l.* and interest, and a moiety of the legacies therein mentioned.

The above fine and recovery have been accordingly levied and suffered.

All the parties are living, and there is a son, the only child of the marriage, about twelve months old.

J. B. the other daughter is also married to Mr. *J. G.* but before her marriage, by lease and release, in which the mortgagee likewise concurred, made a tenant to the precipice of her undivided moiety of the said premises for suffering a recovery thereof, which recovery was accordingly suffered, and the uses declared to the said mortgagee *in su*, for securing the other 200*l.* and interest and *subject* to such payment to herself *in fee*.

The said *J. B.* being thus entitled to the equity of redemption immediately before the said marriage, which was about *three months* ago, in consideration of a competent jointure, conveyed the same to *W. F. Gent. In trust* for the said *J. G.*

Query. Your opinion is desired, whether a partition of the said premises can by any, and what easy method to the parties, and by what parties, be effectually made, to bind not only themselves, but the issue of the said *T. B.* and his wife? If it can be done, by what method, and at whose expence? The mortgagee has received Mr. *G.*'s 200*l.* but has executed no conveyance of the moiety to him. He has signed the receipt annexed, and is he not obliged to convey, when properly requested, at the peril of cost?

Opinion. I am of opinion, that a partition of the said premises may be enforced by a bill in equity, and that the same will be the most easy, expeditious, and effectual method, and which will bind all the parties to the suit, and when made under the authority of the court, will also bind any issue of *T. B.* and his wife, which may hereafter be born. The costs of such suit will be borne in moieties, one moiety by Mr. *G.* and the other moiety by Mr. *B.* as they will have equal benefit of the suit; and I think such bill should be brought by *J. G.* and *W. F.* his trustee, against *T. B.* and *S.* his wife, and their son and only child, and the mortgagee. I think the mortgagee

mortgagee is compellable to execute a re-conveyance of one moiety of the mortgaged premises to Mr. G. *in fee*, and that a proper conveyance for that purpose, should be prepared by Mr. G. and tendered to the mortgagee to be executed; and in case he refused to execute the same, I conceive a court of equity would oblige him to pay the costs occasioned by such refusal.

Nov. 17, 1767.

R. Perryn.

14th Nov. 1767.

Received of Mr. G. the sum of 200*l.* being one moiety of the principal money due to me on a mortgage of the late Mr. R. B.'s estate at B. and 5*l.* 5*s.* for the interest thereof, to this time; and I do hereby discharge him and his moiety of the said estate, of and from the same; *And also* of and from the remaining principal and interest due, or which shall or may accrue, or become due thereon, WITNESS my hand

R. R.

C A S E.

C. P. Esq; by his will dated the 3d day of February 1753, after bequeathing an annuity of 33*l.* to his sister J. P. for life, payable out of his estates at W. C. W. W. and K. Gave to A. P. son of his brother J. P. and to the heirs of his body, ALL those his last mentioned estates, And if he died under age, the testator devised the same to A. P. son of his brother A. P. and to the heirs of his body; and in case both nephews should die under age, then the testator devised the said estates to his brother J. P. and his heirs.

A. the son of J. P. has attained his age of *twenty-one*, but is not the heir at law of the testator.

Query. Can A. the son of J. P. by levying a fine, create a *fee*; or is a recovery necessary for that purpose?

Opinion. A. the son of J. P. being only tenant in tail, and not having the immediate reversion *in fee* in himself, I am of opinion that a recovery is absolutely necessary to procure him the *fee simple* of the estates devised.

Feb. 10, 1768.

W. Rivet.

CASE

C A S E.

June 9, 1762. *J. P.* by his will devises to a younger son in these words,

“ Item, I give to my son *T. P.* all that part of the estate which
 “ I bought of my brother in law *W. P.* and likewise a piece of
 “ ground called by the name of *Golden's Lays* which I bought of
 “ one *J. G.* And likewise I give my son *T. P.* two acres of land
 “ lying in a field called *Penyland* bought of *J. N.* And I also
 “ give my son *T. P.* the house and orchard, and three acres of
 “ land going into the orchard being lands which I bought of
 “ *N. S.*”

The testator also devises to his eldest son, as follows:

“ Item. I give to my son *J. P.* all the other part of the estate at
 “ Greet, as I got by law as the award will plainly set
 “ forth.”

Note. All the premises are freehold.

Query. What estate and interest does *T. P.* the younger and *J. P.* the elder son and heir respectively take under the above devises or otherwise?

Opinion. I am of opinion the above will is not duly attested so as to pass freehold estates, and that the eldest son *J. P.* takes the whole freehold as the eldest son and heir of his father.

June 26, 1767. *Inner Temple.*

Tho. Warren.

Mr. Collet's opinion on the foregoing case.

Opinion. By the above mentioned devise to *T.* the younger son, if there were not other words in the will to shew the intention of the testator, I think he would only be entitled to an estate for life, in the premises devised to him, but as by the will (the probate of which is laid before me, with the above case), four several legacies of 100*l.* each are equally charged on the estates, devised to *T.* and *J.* to be paid within a year after the testator's death, or when the legatees should attain the age of *twenty-two years*, it appears clearly to be the testator's intention to give to each of his sons an estate in *fee* in the premises devised to him; and it has been often determined, that where lands are devised to a person charged with the payment

of a sum of money in gross, to be paid at all events at a certain time, which is the above case, a *fee* is devised, without any other words to pass the inheritance, and more especially when the profits of the lands would not, by the time the legacies thereon charged are payable, amount to sufficient sum to discharge them, for without the *fee* was in such case to pass, it might happen that the devisee, instead of gaining by the devise, might be a loser, and not reap any benefit, which could never be the testator's intention; and wherever the intent of the testator can be apparently collected from the will, it will supply the want of those words which are necessary in deeds to convey an inheritance.

Tewkesbury. Dec. 1, 1767.

H. Collit.

Mr. Madox's opinion on the foregoing case.

Op
Opinion. Upon reading a copy of the will at large, I am of opinion that both *T.* and *J.* take an estate in *fee simple* in the several estates devolved to them respectively by the will. The words at the close of the will *viz.* (each person paying his equal share of all legacies, and debts, &c.) are decisive of the doubt in the former part of the will, and clearly give each of them an estate in *fee simple*.

Dec. 22, 1767. Lincoln's Inn.

John Madox.

C A S E.

May 17, *J. H.* by indenture of this date demised and granted unto 1666. *J. R. D.* a messuage and lands, in —, To hold to him, his executors, administrators and assigns, from the date thereof for the term of 200 years, under the rent of a pepper corn, the remainder of which term is by divers *mesne* acts and assignments in the law, vested in *W. W.* in trust for *R. T.* for so many years of the residue thereof as shall run out in his life time, and after his decease for *J. his wife* for so many years as shall run out in her life time; and after their several deceases in trust for such person or persons and for such term or terms, or for so much of the said term, and in such sort, manner and form as the said *T.* and his wife by deed or instrument in writing, executed in the presence of and attested by two or more credible witnesses; should limit, direct, or appoint. And in default of such appointment, upon other trusts therein mentioned.

These trusts were created by *T.* subsequent to his marriage with his wife, and upon no consideration.

The residue of another term of 2000 years on other lands, subject to the rent of a pepper corn, is also vested in the said *W. W.* upon the like trusts before mentioned.

A term of 99 years, determinable on three lives, on other lands is also vested in the said *W. W.* upon the like trusts.

The two last terms they are entitled to under a will. *T.* and his wife are desirous to make an absolute sale of all the estates.

Query. By what method can the wife pass her estate for life, and can it be effectually conveyed to a purchaser? If not the whole, can any, and what part, and how?

Opinion. I conceive Mr. *T.* and his wife may limit and appoint all the premises to a purchaser for the remainder of the several terms, and direct Mr. *W.* the trustee to assign the same accordingly. After which let *T.* and his wife levy a fine *sur concessit* for a term of 100 years, to some third person, *in trust* for the purchaser, his executors, administrators, and assigns, and thereby the wife's interest in the premises will be extinguished.

Dec. 24, 1767.

W. Rivet.

C A S E.

BY an act of parliament of the sixth year of His present Majesty, for raising a land tax in Great Britain for the service of the year 1769, It is enacted, that a sum of two millions and upwards shall be raised and paid to His Majesty in Great Britain, by such proportions, and in such manner as in the act expressed; and that one million and upwards, part of the said two millions, shall be raised and paid to His Majesty, within one year from the 29th day of March 1766; and shall be assessed in the several counties, cities, &c. of England, &c. according to the proportions therein; amongst which the proportion for the city of Westminster and liberties thereof; and offices executed in Westminster-Hall is 63,092 l. 1 s. 5 d. And towards raising the said sums, personal estates, (except as in the act) offices of profit, annuities, and pensions are made liable.

And that the full sum may be compleatly raised and paid to His Majesty's use, It is enacted, that all and every manors, messuages, lands, tenements, &c. shall be charged with as much equality and indifference, as is possible, by a *pound rate*, towards the several sums by the act imposed, so that by the said rates the full sums to be raised, shall be compleatly and effectually taxed, assessed, levied, and collected.

Commissioners are appointed for putting the act in execution within and for the same counties, cities, &c. respectively, who were to meet on or before the 30th day of April 1766, and to subdivide for the service of each hundred, &c. or other division, as might best conduce to His Majesty's service.

The commissioners for *Westminster* and the liberties, and offices executed in *Westminster-Hall*, met on the 30th day of April 1766, and settled the *quota* to be raised in each parish, or subdivision, within their jurisdiction, according to the accustomed proportion.

The parishes of *St. Martin in the Fields* and *St. Paul Covent Garden*, are two of those within the liberty of *Westminster*, and have each of them a distinct proportion of the whole sum to be raised.

The parish of *St. Paul Covent Garden*, having been originally a precinct only, in the parish of *St. Martin in the Fields*, but separated by act of parliament of the 12th of Car. II. is bounded almost on all sides by *St. Martin's*, and there are but few of the boundaries that are formed by the streets, so that lines drawn directly from one boundary mark to another, or from and to points, which are acknowledged to be boundaries, will in many places intersect the premises in possession of one person, and in many instances will intersect even the houses themselves.

In the year 1762, *J. M.* became tenant by lease of a messuage in *Maiden Lane*, (confessedly in the parish of *St. Paul Covent Garden*), together with diverse back buildings, which adjoined to the house, and extended as far as a court in the parish of *St. Martin's*, and with which court there was a communication by a back door. These premises are described in his lease, as being all in *Covent Garden*, and he pays the yearly rent of 36*l.* for the whole, and he was rated to the land tax in *Covent Garden*, (as the former tenant has been) at 36*l.* for the whole, without any claim from *St. Martin's*, and it cannot be discovered that any taxes have been taken by *St. Martin's* for any part of these premises.

About the year 1764, *M.* pulled down all these back buildings, and rebuilt them upon a plan much more commodious for his business of a *cabinet maker*, &c. with the addition of a large auction room over them, but there is not any bed-chamber, and the communication with *St. Martin's* is still preserved, and these new buildings adjoin to his dwelling house. Under the dwelling house and the new building is a vault, for many years past used as a cyder cellar, the access to which is from *Covent Garden*.

In *Covent Garden* parish, it is not the custom to rate personal estates, but to rate the landed estates at the highest improved yearly value, and the assessors of the land tax considering the improvement

made by *M.* as liable to an increase of his rate, they raised the assessments upon him in 1765, to 65*l.* a year, to this assessment he appealed in the proper way, upon which appeal the commissioners reduced it to 60*l.*

By this time, the parish of St. *Martin's* began to think of taking advantage of the improvement made by *M.* alledging that all or the far greater part of it is in that parish, and upon a suspicion, or expectation, that he might be liable to too great a proportion of taxes between the two parishes, he refused to pay the rate to *Covent Garden* and suffered a distress to be taken for the rate for 1765, but did not further contest the matter with that parish. Towards the *quota* for 1766, he is again rated in *Covent Garden* at 60*l.* and St. *Martin's* have now lately rated him at 40*l.*

A line drawn from the extreme boundaries of the parishes, will intersect the new buildings, and would leave almost the whole of it in St. *Martin's*; a line drawn from the extent of the adjoining tenements, and which continue rated to, and are considered as belonging to *Covent Garden*, would intersect the improvements, particularly the auction room, the room under it, and the cyder cellar, leaving about two thirds of the auction room, and room under it, and almost the whole of the cellar, in *Covent Garden*.

The plan herewith left, shews, as near as may be, the situation of the premises, about which the dispute arises, together with as much of the adjoining estates, as was thought necessary to explain the question. The red dotted line is drawn from the extent of the parishes, as determined by the buildings in the street, the other red lines shew the extent of *Covent Garden*, as the same seems to be determined by the possession of the tenants, and *M.*'s premises in dispute are distinguished by shading.

Query. Should these back buildings of *M.*'s be rated in *Covent Garden*, or St. *Martin's*, or proportionably between the two, and if proportionably, how is the proportion to be settled?

Opinion. There is no doubt in point of law, but Mr. *M.* the occupier for such part of the premises as lie in *Covent Garden* parish should be rated to the parish of *Covent Garden*, and for the remainder which are in St. *Martin's* to the parish of St. *Martin*, but the difficulty will be to ascertain with precision the boundaries of the two parishes, and to proportion the rate, and therefore it will be adviseable for Mr. *M.* to get the officers of both parishes, to agree upon the proportion of the rates to be paid to each; and if that cannot be done, Mr. *M.* must appeal against both the rates, and then the justices of the sessions will ascertain and settle the proportion of rates to be paid to the parishes respectively.

Another

Another tenant in *Covent Garden* has lately taken an adjoining house in *St. Martin's*, to enlarge his shop, and having bricked up all approach from *St. Martin's*, has his communication with it only from *Covent Garden*.

Query. Should this tenant be wholly rated to *Covent Garden*, or to each parish, as before?

Opinion. I think this blocking up the windows which looked into the parish of *St. Martin's* or altering the way into the premises which are situated in that parish, cannot take away or affect the right of the parish of *St. Martin's*.

The duties on windows, &c. by the 20th of *Geo. 2.* 31st of *Geo. 2.* 2d of *Geo. 3.* and 6th of *Geo. 3.* are laid upon every dwelling house inhabited.

And by an act of the 21st of *Geo. 2.* to explain and amend the act of the 20th. It is enacted, that every larder, workhouse, laundry, bakehouse, brewhouse and lodging-room, belonging to, or occupied with any dwelling house, whether the same shall, or shall not be within, or contiguous to or disjoined from the body of such dwelling house, shall be deemed and taken to be part of such dwelling house.

Query. Should this tax be assessed upon the whole in the possession of each inhabitant, including outhouses and adjoining buildings in another parish? or should the division of the parishes, make a division of the rates?

Opinion. I think the window tax, as well as the other parochial rates, should be apportioned between the two parishes according to the respective interests of each parish in the property to be rated; and this ought to be done amicably if it may be, between the two parishes, for it is hard upon the occupier that he should be put to expence and the tenant to, and perhaps too rated higher than he ought to be on account of the dispute between the parishes.

Lincoln's-Inn March 7, 1767:

Fl. Norton.

C A S E.

Jan. 8. 1742. MRS. S. K. deceased by will of her own hand writing, gives several pecuniary and specific legacies and (among other things) disposes of a silver cup and cover, the prints or pictures in the back parlour, some china, books, and an inlaid cabinet, and appoints Dr. A. Y. her executor.

By

By the first codicil to her will, written and signed by her, she gives several other pecuniary and specific legacies to several persons, and all her medals, gold, silver, brads, or copper, &c. she gives and leaves to the said Dr. A. Y. and then she directs as follows: *viz.*

“ As for all my shells, fossils, prints, drawings, gems, pebbles, spars, corals, cars, minerals, antique figures, birds, and nests, (dead I mean, for live dogs, cats, birds, &c. I leave to S. P. my servant, and my dear Billy’s small picture by Mr. Lens, to her also), woods, gums, seals, corals and carolines, of all which I hope to have an inventory, to be sold by auction, and all the money arising from such sale to be paid to the treasurer of the infirmary in James Street Westminster, adjoining to Cabbage Lane or Street, and by him as my executor, and R. N. apothecary in Tothill Street aforesaid, shall approve, to be laid out for the benefit of the poor of that house, or in that house, only twenty pounds to be given to St. George’s Hospital, at Hide Park.”

At the conclusion of another codicil (which is the third to her will), she adds, “ This is my last will and testament, writ with my own hand on eight sheets of paper, and one side of each sheet perfectly blank.”

Note. These eight sides contain the will and three codicils.

Nov. 7, 1755, By another codicil written and signed by her, she gives several other legacies, and then follows:

“ And notwithstanding what I have said about my curiosities, &c. as mentioned above, I hope to dispose of them myself before I die, and therefore I desire no notice to be taken, or use made of any thing I have writ about the disposal of them before in my will.”

Note. The said S. K. died possessed of a considerable collection of shells, fossils, &c.

As the word *curiosities* may extend to the *plates, prints, pictures, books and inlaid cabinet* mentioned in her will, as well as to the *shells, fossils, &c.* mentioned in the first codicil, and which she had not disposed of herself before she died, as in the last mentioned codicil she mentions she hoped to do, and as she did not dispose of her *shells, fossils, &c.* by her will, but by a codicil (though by the conclusion of the third codicil to her will, she calls the whole, meaning her will and codicils by the terms and description of her last will and testament), and as the bequest is particularly specified by the first codicil, and only termed *curiosities* by the four codicil.

Query. Whether under these circumstances, the *codicil* dated Nov. 2, 1755, will amount to a revocation of the bequest of her *shells, fossils, &c.* in the first *codicil*?

Opinion. I do not think that the word *curiosities* will be construed to relate or allude to the *plate, prints, pictures, books, and inlaid cabinet* mentioned in the will, but will rather be construed to relate to the *shells, fossils, and other curiosities* mentioned in the first *codicil*, for in this *codicil* (which I am apprehensive will be looked upon to be wrote after the year 1749, because the third figure is a 5, though the fourth is wanting), the subsequent words are, "I hope to dispose of them myself before I die, and therefore desire that no use may be made of any thing that I have wrote before in my will," which I think will confine this *codicil* to the *curiosities* mentioned in the first *codicil*, because she had wrote particular directions touching the disposal of them; but no such directions touching the disposition of the abovementioned specific legacies of the *plate, prints, &c.* and though she says she had given directions touching the disposal of them in the will, and these directions were in her first *codicil*, yet it is clear to me, that she comprised her *will*, and all her *codicils* under the word *will*, as she had done before when she writes on her *will* and *codicils*, "This is my last will," in which she includes three *codicils*, and if she referred to these *curiosities* directed to be sold, then the question is, Whether this *codicil* will revoke the first *codicil* as to this gift or not, and I think that this is not a clear point, but I am inclined to think that it will be looked upon as a revocation, for though she might intend to change her mind and to dispose of these things during her life, and yet did not do it; yet she has shewn an intent that her directions concerning them should not be observed, having desired that no notice might be taken, or use made of any thing that she had wrote about the disposal of them in her will, so that this seems to be a revocation of the devise to the charity.

Lincoln's-Inn, Jan. 14, 1755.

R. Wilbraham.

Mr. Cambell's opinion on the foregoing case.

Opinion. The *will* and *codicils* are strangely expressed, but upon the whole I think the bequest is revoked.

Feb. 15, 1755.

A. H. Campbell.

CASE.

C A S E.

July 11 and 12, **B**Y Lease and release, The release *tripartite*, *B*etween *J. H.* Esq; and *T. O.* Gent. of the 1st part, *A. E. W. E.* and *W. P.* Esqrs; of the 2d part, and *J. G.* Yeoman, and *C. F.* Gent. of the 3d part, purporting to be a conveyance in *fee* of a messuage and lands in *H.* in the parish of *P.* to the said *C. F.* in trust for the said *J. G.* and his heirs.

12th and 13th October, 1685, By lease and release being a mortgage in *fee* of the said premises from the said *C. F.* and *J. G.* to *W. H.* clothier, in the usual way for securing 400*l.* and interest.

7th November, 1696, The said *J. G.* by indenture of this date made between him of the one part, and the said *W. H.* of the other part, he charged the said premises with 100*l.* more, making the whole 500*l.*

7th and 8th November, 1698, By lease and release, the release *tripartite*, between the said *W. H.* of the 1st part, the said *J. G.* of the 2d part, and *T. A.* clerk, of the 3d part, being a transfer to said *A.* of the above mortgages for securing to him 600*l.* and interest.

7th and 8th November, 1720, Lease and release, The release *quadruplicate*, between *J. A.* Esq; (executor and heir at law of said *J. A.* and said *J. G.* of the 1st part, *R. L.* mercer, of the 2d part, *T. L.* mercer, of the 3d part, and *J. L.* linen-draper, of the 4th part, being a transfer of the last mortgage to *R. L.* for securing to him 700*l.* and interest.

7th and 8th November, 1723, By lease and release being a transfer of the same mortgage to *T. L.* for securing to him 700*l.* and interest.

8th and 9th November, 1725, By lease and release, being a transfer of the same mortgage to *J. C. C.* Esq; for securing to him 700*l.* and interest.

9th June, 1732, The said *J. G.* by his will of this date gave and devised as follows:

"I give, devise, and bequeath unto my dear and loving wife
"E. G. all and singular my messuage or dwelling-house,
† T "closes,

" closes, pieces and parcels of ground, lands, meadows, pastures, feedings, and hereditaments, whatsoever, with all and singular the appurtenances to them, every, any or either of them belonging or appertaining, whereof or where in I am now possessed, interested, or entitled unto, situate, lying, and being, within the Hamlet of *H.* in the parish of *P.*, aforesaid, *To hold unto my said wife *E.* and her assigns, for and during the term of her natural life, without impeachment of waste; she my said wife paying out of the rents and profits of the said hereby devised messuage, lands, tenements, hereditaments, and premises, all such interest money as at the time of my death shall appear to be due and owing for the principal sum wherewith the said lands and premises now stand engaged: And do also yearly, during her natural life, from time to time, when and as often as such interest shall become due for the said principal sum, well and truly pay, satisfy, and discharge, the same by the ways and means aforesaid: And from and after the respective deceases of me and *E.* my said wife, I give, devise, and bequeath the said messuage, lands, tenements, and hereditaments, unto my kinsman *W. G.* son of my late brother *R. G.* *To hold to him my said kinsman *W. G.* for and during the term of his natural life: And after his decease to the heirs male of his body, lawfully begotten, or to be begotten: And for want or in default of such issue or heirs of my kinsman *W. G.* I give, devise, and bequeath the before-mentioned messuages, lands, tenements, and hereditaments, to my niece *E. C.* the wife of *S. C.* of *B.* in the county of *S.* Shopkeeper, and to the heirs of her body begotten or to be begotten: And for want of such issue or heirs of her the said *E. C.* I give, devise, and bequeath the beforementioned lands and tenements to the right heirs of me the said *J. G.* their heirs and assigns for ever."**

The testator after charging his said lands with the payment of legacies, therein specified, and his bond debts, his further will was: That in case the person or persons to whom the said lands and tenements stood charged, should be willing to call in the money due, that all and every person and persons, who by virtue of his said will should or might claim or pretend to claim any estate or interest therein othereto, as aforesaid, should join in any deed or deeds, and do any act or acts as council should advise, or else he or they refusing should be wholly excluded from having or receiving any benefit or advantage by his said will. And he made the said *E. G.* his wife, sole executrix and residuary legatee.

The said will was duly executed and attested.

9th and 10th October, 1754, By indentures of lease and release *quadruplicate* and made between said *J. C. C.* of the 1st part, said *B. G.* of the 2d part, *H. D.* Esq; of the 3d part, and the hon. *C. B. T. B. T. P. T. C. G. S. F. N. C. H. M. L. W. P. E. B. J. H. C. E. P.* and *E. P.* Esqrs; the then trustees and visitors of the hospital of *H. S.* Esq; situate in *B.* in the county of *S.* of the 4th part, reciting, amongst other things, that there was then due to the said *J. C. C.* for principal and interest, on mortgage and bonds, the sum of 960*l.* purporting to be a transfer of the said *C.*'s mortgage to the said *H. D.* *In trust* for the said trustees and visitors.

The said *E. G.* is since dead, and the said *W. G.* tenant in tail, after her death, by indentures of lease and release bearing date respectively, the 17th and 18th July, 1755, The release *tripartite*, and made between the said *W. G.* of the 1st part, *G. G. Gent.* of the 2d part, and *G. L. Gent.* of the 3d part. For the considerations therein mentioned the said *W. G.* granted and released to the said *G. G.* and his heirs the said premises, *To hold to and to the use of the said G. G. his heirs and assigns*, for making him tenant to a precipice for suffering a recovery of the then next *Hilary term*, which recovery was thereby declared to be and enure to the only proper use and behoof of the said *W. G.* his heirs and assigns for ever.

The said recovery was suffered in the said *Hilary term* and the said *W. G.* was vouchee therein.

Query. If the limitations above stated are not effectually barred, and an estate in *fee-simple*, subject to the mortgage debt, vested in the said *W. G.* notwithstanding the mortgagee did not concur in making the tenant to the precipice?

Opinion. The estates created by the will of *J. G.* were all equitable estates in their creation, and I am of opinion the recovery was well suffered, and that *W. G.* is well seised of the inheritance in *fee-simple*, subject to the mortgage to *H. D.* in trust, &c.

Nov. 25, 1767.

Wm. Rivet.

C A S E.

In the year 1719 several well disposed gentlemen formed themselves into a society in *Westminster* for the relief of necessitous sick and wounded from all parts, and by voluntary subscriptions and benefactions were enabled to hire a proper house, and to defray the expence of maintaining and providing medicines for many poor sick people

recommended to them ; and for many years past have not had less than between 200 and 300 poor constantly under their care, either as in-patients or out-patients ; which society, from the time of its being first formed has been called by the name or title of the *Public Infirmary in Westminster*, and many legacies have been bequeathed to the society, under that title, and received by the treasurer appointed or chosen by the subscribers.

Mrs. *E. S.* by her will, dated 4th *May*, 1733, and codicils thereto, makes the following bequests : *viz.*

“ I give towards the support of the infirmary 500*l.* I give to
 “ the infirmary in *Westminster* the sum of 200*l.* And I give
 “ 300*l.* more to the use of any incurables, if there shall be
 “ any ward erected or built for such charity in three years after
 “ my death.” And appointed Mrs. *E. N.* her Executrix.

Mrs. *S.* died soon after, and Mrs. *N.* proved her will, and in *August*, 1735 paid to the treasurer of the infirmary the above legacies of 500*l.* and 200*l.* and in *January*, 1737, paid the legacy of 300*l.* given for the use of incurables, (a proper house or apartment having some years before that time, been erected into a ward for incurables and several patients been admitted therein.

Ever since the establishment of the fund for the said charity which was the 20th of *November*, 1734, that fund, and the fund for incurables, have been looked on as distinct charities ; distinct books and accounts having been always kept for the different charities.

The said *E. N.* by her will dated the 15th of *February*, 1737, makes a bequest in the following words.

“ To all the public charities to which dear Mrs. *S.* gave any legacy or legacies by her will, I do hereby give to every one of them the further sum of 100*l.* a-piece.”

And appointed Mr. *P.* her Executor.

The said *E. N.* died about *August*, 1738, and Mr. *P.* proved her will, and in *August*, 1739, paid to the treasurer the 100*l.* legacy to the curables, and since the payment thereof, doubts have arisen whether under the words *public charity* the infirmary is intitled to the legacy paid them, and to the further sum of 100*l.* for the incurables and has declined paying the last mentioned legacy, and apprehends he could not with safety pay either without the direction of the court of chancery.

Query. Whether the above mentioned charities for curables and incurables will not be considered as two distinct charities, and, as such, intitled to the legacy of 100*l.* a-piece, under the will of Mrs. N. and may the executor safely pay the same without the directions of the court of *chancery*; if not, and an information in the name of the Attorney General at the relation of the persons interested in the several charities mentioned in Mrs. S.'s will, (for there are several others of the like nature, to which Mrs. S. bequeathed legacies) should be brought against the executor, will the court decree costs out of the several legacies, or out of Mrs. N.'s estate; there being assets, as is apprehended, sufficient to pay the debts and specifick legacies, with a considerable overplus?

Opinion. I conceive, the charities of the curables and incurables are to be considered as distinct and public charities within the intent of Mrs. N.'s will, and intitled each to 100*l.* In case an information should be brought in the name of the Attorney General against the executors of Mrs. N. for payment of those charitable bequests, the costs will probably be ordered, not out of the legacies, but out of the effects of Mrs. N. I think the executor may safely pay both these legacies without the decree of a court of equity.

J. B. Esq; by his will, dated 26 July 1736, bequeaths:

" To the trustees of the infirmary belonging to St. Margaret's parish, Westminster, 200*l.* one hundred pounds, a part thereof, to be disposed of for medicines and linen for the house, and 100*l.* the residue thereof, to buy cloaths for such poor objects as shall be cured in the infirmary, to be given to them at the time of their quitting the same." And subjects his Manor of H. together with his capital messuage and lands thereto belonging, and his personal estate, with the payment of his debts and legacies, and appoints J. H. R. P. H. J. R. and B. T. his executors, and soon after died.

Mr. H. and Mr. H. have since proved the will, but refuse paying the above mentioned legacy.

Query. Whether the public infirmary is not intitled to the said legacy; and may not the executors safely pay the same without the directions of the court of *chancery*: and if they refuse, will it not be adviseable to file an information against them in the name of the Attorney General, at the relation of the trustees of the infirmary, to compel the executors to pay the same?

Opinion.

Opinion. I am of opinion, the infirmary is intitled to this legacy of 200*l.* out of the personal estate, in case that is sufficient, but not out of the real; and the executors may safely pay it without the direction of the court of chancery. If they refuse, it will be proper to file an information in the name of the Attorney General against them, at the relation of some of the trustees

August 4th, 1740.

D. Ryder.

Since stating the foregoing case, it appears that Mr. B. by his will devises to trustees, and their heirs, his manor of *H.* and the lands thereto belonging, *In trust* to sell the freehold and inheritance thereof; and till sale, directs, that the rents and profits of his lands, and all his goods, chattels, and personal estate, except what is specifically devised by his will, shall be applied in payment of his debts, funeral charges, and legacies: And further directs his said trustees, out of the money arising from such sale, and out of his personal estate, to pay several pecuniary legacies to his friends and relations, and, among those several bequests, makes the foregoing to the infirmary, and appoints his said trustees his executors.

Quere. Whether, as the real estate is directed to be sold for payment of his debts and legacies, the aforesaid charitable bequest will not be good, notwithstanding the *statute of mortmain*, supposing the personal estate should not be sufficient: Whether, if the personal estate should not be sufficient to pay all his pecuniary legacies the executors may not be compelled to pay this legacy out of the personal estate (not specifically bequeathed) preferably to the legacies to his friends and relations, which may be a good charge on the real estate: And, if the executors are not compellable to pay this legacy, in preference to those of his friends and relations, whether the infirmary will not be intitled to a share of their legacy proportionably with the other legatees, as far as the personal estate (not specifically bequeathed) will extend?

Opinion. I conceive a court of equity will so marshal the assets, that, as there is sufficient real estate to pay all the other bequests and legacies, this particular legacy shall be wholly paid out of the personal estate, in order that the whole will may be performed according to law.

August 4th, 1740.

D. Ryder.

It appears by the executors of Mr. B. that he did not leave any personal estate, but what he specifically bequeathed by his will, in which case—

Quere,

Quere. Will his real estate (as he directed that should be sold for payment of his debts and legacies) be liable to the aforegoing charitable bequest?

Opinion. The devise for the benefit of the charity, so far as it is intended to affect the real estate, is void by *stat. 9 Geo. 2.* and as there is no personal estate liable to it, I dont, see how it can be paid at all; and I am of opinion the real estate is not liable to it.

November 20, 1740.

D. Ryder.

C A S E.

20th August, 1762. *S. H.* by her will of that date, duly executed and attested, gave and devised unto *T. M.* and *E. L.* ALL her messuages, lands, tenements, and hereditaments whatsoever; with all and every the rights, members, and appurtenances thereunto belonging; situate, lying, and being, within the parish of *N. C.* or elsewhere, as well leasehold as freehold, whereof or where she was or should be seised, possessed, or any ways entitled unto either in possession or reversion, and whereof she had power to dispose, together with all the rents, issues, and profits thereof; *To hold the said messuages, lands, tenements, and hereditaments, with the rents, issues, and profits thereof, unto the said T. M. and E. H. their heirs, executors, administrators, and assigns, In trust;* nevertheless, that they the said trustees and the survivor of them, his heirs, executors, and administrators, from time to time, should pay over and apply the rents, issues, and profits of all and singular the said messuages, lands, tenements, hereditaments, and premises, unto her daughter *E.* then the wife of *G. H.* since deceased, during the term of her natural life, for her seperate use and disposal: And from, and after her decease, the testatrix gave and devised the said messuages, lands, tenements, hereditaments, and premises, with the appurtenances, unto her grandson *R. H.* now about 16 years of age, only son of the said *G.* and *E. H.* for and during the term of his natural life, and from and after the determination of that estate, she gave and devised the said premises with the appurtenances unto the said *M.* and *H.* and their heirs, during the term of the natural life of the said *R. H.* *In trust,* to preserve the contingent estates, &c. And from and after the decease of the said *R. H.* she gave and devised the said premises with the appurtenances to his first and other sons in tail general: And in default of such issue, to all and every his daughter and daughters in tail general, as tenants in common: And in default of such issue, she gave and devised the said premises with the appurtenances to her own right heirs for ever. And the residue of her estates, money, securities, goods, and chattels, she gave and bequeathed to said *M.* and

and *H.* their executors, &c. with full power for them or the survivor, his executors, &c. to place the same at interest on real or other securities, the interest and proceed thereof was to be applied and paid to her said daughter *E. H.* for her life, for her separate use and disposal: And from and after her decease, the testatrix gave the residue of her said estates, monies, &c. unto her second grandson *R. H.* his executors, and administrators, and nominated the said *M.* and *H.* executors on the trust, and for the purposes aforesaid.

At the death of the said *E. H.* the said *G. H.* her husband, as father and natural guardian for the said *R. H.* possessed himself of the said estates, but unhappily for the child he has not acted as such. He has cut down and sold quantities of timber, spent the money, and dug up five or six acres of the meadow, for the advancing the present income, which after a few years will be greatly reduced within the former rent, suffered the buildings to decay for want of repair, and the whole of the estate to run to ruin: But this unnatural behaviour extends still further, he has totally neglected his education, having never kept him at school more than one year and a half, which was some time ago; and since this he has been at home with his father, under the management of a whore he keeps in his house of the most abandoned kind, both in conversation and indecent behaviour. This wench behaving very ill to him, and not allowing him necessaries, about half a year ago he left his father's house and went to his uncle the said *E. H.* his mother's sister's husband, having no nearer relation, who received and cloathed him, as he was quite ragged, and has maintained him and kept him at school ever since.

The boy being desirous that his uncle *H.* should have the care of his person and estates, and Mr. *H.* being inclined to serve him, if he can be indemnified against the cost of the appointment;

Quere. Whether the father can by any, and what method, be removed from the guardianship of his child and the possession of the estates, and Mr. *H.* appointed for him; and by whom must the expence be defrayed; whether out of the chattels in Mr. *H.*'s hands, or out of the rents and proceed of the estates and chattels; or will the same be a lien or charge on the freehold and leasehold estate; if not, or not payable out of the principal money, but only out of the rents and interest, should the minor die before it be satisfied, can it then be obtained? If the application should not be attended with success, can Mr. *H.* applying at the boy's instance, obtain the cost of attempting to procure the appointment?

The personal estate, now in Mr. *H.*'s hands, amounts to about 300*l.*

Opinion. The possession and management of the estates may be taken from the father, by filing a bill in equity in the name of

R. H.

R. H. the infant, by his next friend his uncle may nominate, and which bill should be brought against the father, and Mr. M. and Mr. H. the trustees and executors named in the will of the testatrix. And it should be thereby prayed, that the father may account for the rents and profits of the estates received by him, and the money raised by timber, and may pay what shall become due from him into the Bank, to be placed out in the Accountant General's name for the benefit of the infant; and that a receiver may be appointed of the freehold and leasehold estates, with the usual powers to let and set the same. And as against Mr. M. and Mr. H. praying to have the accounts of the personal estates taken, and the same placed out for the infant's benefit; and that a proper allowance may be made for his maintenance and education for the time past since he left his father's, and for the time to come until he shall attain his age of 21 years. If such bill is filed Mr. H. may propose himself a receiver; and I think the master would appoint him, as I can see no objection that can be made to him; and I think an allowance would be made for the infant's maintenance and education, and directed to be paid to such person as has or shall maintain him; and that Mr. H.'s costs, and all the other plaintiffs to the suit, except the father's, would be directed to be paid out of the infant's estate; such as relate to the real estate out of those estates, and such as relate to the personal estate out of the personal. And, as I conceive, Mr. H. can run no risques in case the infant should die before he attains 21; as he would have a right (as I apprehend) to retain the costs of such suit out of the trust estate in his hands.

Jan. 1st. 1761.

R. Perrin.

C A S E.

October 19 and 20, 1710. INDENTURES of lease and release, tripartite, between T. F. maltster of the 1st part, J. T. alias D. yeoman, and G. F. mercer of the 2d part, and M. T. alias D. spinster, of the 3d part. The said T. F. in consideration of a marriage then intended to be had and solemnized between the said T. F. and the said M. T. alias D. and of a competent marriage portion by him with her received; and also 5s. to him paid by the said T. alias D. and G. F. Did grant and release unto the said J. T. alias D. and G. F. and to their heirs,

A messuage, tenement, and dwelling-house, with the gardens, orchards, and back-sides thereunto belonging, with the appurtenances, in

To hold to the said trustees their heirs and assigns, to the only proper use and behoof of the said trustees, their heirs and assigns for ever, on the following trusts;

To the use and behoof of the said T. F. for life, without impeachment of waste; then,

To the use and behoof of the said M. T. alias D. for her life; then,

To the use and behoof of the heirs of the body of the said T. F. on the body of the said M. his said then intended wife, lawfully to be begotten; remainder,

To the only proper use of the heirs and assigns of the said T. F. for ever.

The marriage took effect; and the settler leaving issue of the marriage H. T. the eldest son, and other children,

The said T. F. by his will dated the 31st *August* 1742, gave to his wife M. his house and backside at *Stoke*, with all the premises thereunto belonging, and likewise all his leasehold estate whatsoever, *To hold the same during her natural life, or so long as she should keep herself unmarried; and after her death or intermarriage, which should first happen, he gave unto his son H. his house and backside at Stoke with all the premises thereunto belonging, to him and his heirs for ever; and also a small close of leasehold lying at Stoke, called Lydford Close; and the rest of his leasehold estates he gave to his son T.*

N. B. The said T. F. the testator, had no other freehold estate in *Stoke*, than the messuage and premises comprised in the above settlement.

The said M. wife of the settler is dead, but survived the said H. F. the first son of the said marriage, who by his will dated the 9th of *March* 1763, Gave and devised unto his brother T. F. and to his brother in law W. H. All his messuages, lands, tenements, and real estate whatsoever, situate, lying, and being in the parish of *Stoke* aforesaid, and *Wincanton* in the county aforesaid, or elsewhere, whereof he was seised, possessed, or any ways intitled unto, in possession, reversion, remainder, or expectancy, with their and every of their rights, members, and appurtenances; *To hold to the said T. F. and W. H. and their heirs, In trust, that they, and the survivor and his heirs, should and did, by and out of the rents, issues and profits of all and singular the said freehold estate, lands and premises, receive and take 5s. by the week, and pay the same over, without any deduction*

Reduction whatsoever, unto and to the separate use of the testator's daughter *E.* wife of *R. S.* during her natural life. And after the receipt and payment thereof, did and should permit and suffer the testator's wife *M.* to receive and take the residue of the rents, issues, and profits of all and singular his said freehold estates, lands, and premises for and during the term of her natural life. And from and after the decease of his said wife, the testator's will was, and he did thereby give and devise all and singular his freehold messuages, lands, tenements, hereditaments and real estate, whatsoever and wherever, unto his nephew *H. F.* son of his said brother *H. F.* to hold to his heirs and assigns for ever, subject to the said annuity of five shillings a week as aforesaid.

The said *H. F.* the testator, died seized of other freehold lands in *Stoke* aforesaid, of a considerable value, and left issue only the said *E. S.*

No Fine was levied either by *T. F.* the settler, or the said *H. F.* his son.

Query. As the settlement is penned, had not *T. F.* the settler an immediate estate tail, or an estate tail in remainder in the premises under the settlement; and, as the legal estate is vested in the trustees named in the settlement, could he, or could he not, bar the estate tail by his will; and did he sufficiently pass the equitable interest in fee simple, subject to the estate for life of *M.* the wife of the settler, so as to give his son *H.* the devisee a disposing right of it by his will?

If *T. F.* the settler had no such power; Had the said *H. T.* the son, as tenant in tail, a right to dispose of the equitable interest in fee by his will, subject to his mother's estate for life, if he survived him; or could he not bar it without fine, whether he survived the mother or not; and whether he had or had not a fee simple estate in *Stoke*, beside the freehold messuage; and in either case, Can Mrs. *F.* the widow and devisee of the said *H. F.* claim an estate for her life under his will, or to what other interest is she intitled; and how must she proceed to obtain it; or to whom do the settled premises belong?

Opinion. Neither father nor son levied a fine; therefore the settled premises, (notwithstanding the remainder in tail vested in the father, liable to be barred during his life) descended to *H.* the son, as heir of his father's body begotten on *M.* and from him they are descended to *E. S.* his only daughter. *H.*'s widow is not intitled to dower out of the lands intailed, because he was never actually seized during his marriage, as his mother survived him. *T.* the brother, and *H.* the nephew

phew, also cannot claim them, unless *E. S.* shall die without issue of her body, and without suffering a recovery to bar the limitation of the estate tail in the settlement, and the reversion in fee expectant upon it. Trusts and legal estates are subject to the same rules and modes of conveyancing; and therefore the circumstance of trust, or not, is immaterial in the present case. All the unsettled lands of *H.* pass by his will, subject to the weekly payment directed, and to the widow's estate for life. The principal doubt in this case is, whether *E. S.* must not elect either to take the lands entailed under the deed of 1710, and renounce the annuity payable at the rate of 5*s* per week, or else accept the annuity under the will, and renounce the entail. It appears to me, that the testator meant to build his settled as well as unsettled estates, he having devised all his freehold, &c. whereof he was seized, possesst, or which he was any way entitled to, &c. These words are comprehensive to include the lands settled.

August 12th, 1767.

C. York.

C A S E.

3d July, 1748. **B** Y settlement on the marriage of *J. J.* Esq; with lady *A. M.*

Reciting, that it had been agreed that 2000*l.* part of Lady *A.*'s portion should be paid into the hands of Lord *N.* and *G.* (now Earl of *G.*) and *H. A.* Esq; upon the trusts after declared; and in pursuance of such agreement Lady *A. J.* had assigned to the trustees divers lands in *Ireland*, which had been demised to her for 99 years, for securing 1000*l.* and interest, *Upon trust*, to receive the money and apply the same *upon the trusts* after mentioned; and reciting, that Lady *A.* had transferred to the same trustees 1000*l.* bank annuities of 1748.

In consideration of the marriage, &c. the manor of *Dallington*, and other the estates of the said *J. J.* are conveyed to Lord *N.* and *G.* and Mr. *A.* their heirs and assigns.

To the use of Mr. *J.* his heirs and assigns, till the marriage; and from the solemnization thereof,

To Sir *D. O.* his executors, &c. for 99 years, (this term was for raising 150*l.* per annum for Lady *A.*'s separate use during coverture) and for the expiration and determination of the said term.

To Mr. *J.* for life, *sans waste.*

Remainder to the trustees, to support the contingent remainders.

After Mr. *J.*'s death, to the use and intent that Lady *A.* might receive a rent charge of 600*l. per annum.*

To the use of *J. L.* Esq; for 200 years from Mr. *J.*'s death. (This term was for securing the rent charge, with power to demise, &c.)

Remainder to the said Lord *N.* and *G.* and Mr. *A.* their executors, &c. for 500 years.

The trusts of this term, and on which the question arises, are stated at large herein after.

Remainder to the first son of the marriage in tail male.

Remainder to the second, third, and fourth sons, &c in tail male.

Remainder to Mr. *J.* in fee.

The said term of 500 years was so limited to the trustees upon trust, that in case the said *J. J.* should have issue of the said marriage a son, and also any other child or children beside an eldest or only son, be they son or sons, daughter or daughters; that then the said trustees should, after the said *J. J.*'s decease, without prejudice to the said yearly rent charge limited to the said lady *A.* by sale or mortgage of all or any part of the said premises, or by the rents and profits thereof, or otherwise raise 2000*l.* towards the portion or portions of such your child or children, to be paid in case there should be but one such child the whole 2000*l.* And in case there should be two or more such children, then the said 2000*l.* to be equally divided amongst them, the same to be an interest vested in such of the children as shall be a son or sons at their age of 21 years; and in such of the said children as shall be a daughter or daughters at their age of 18, or marriage, but to be paid as herein after mentioned, viz. the portion of your sons to be paid to such of them as shall be under the age of 21, at the death of said *J. J.* when they shall respectively attain the age of 21, and to such as shall attain the age of 21 in the life time of the said *J. J.* at the end of six calendar months next after his decease, with interest from the time of his death at 4*l. per cent.* And the portions of such daughters to be paid to such of them as shall be under the age of 18, and unmarried at the time of the death of the said *J. J.* at their ages of 18 or marriage; and to such of them as shall attain the age of 18, or be married in the life time of the said *J. J.* at the end of six calendar months next after his decease, with interest from the time of his death at the rate before mentioned.

Provided if any such your other children as shall die before their portions or shares in the said 2000*l.* shall become vested as aforesaid, or any such your son shall become an eldest or only son; then the shares of him or them so dying or becoming an eldest or only son shall be paid to the survivors, share and share alike, and become vested when and as their original portions shall vest and become payable aforesaid.

And upon further trust; that if there shall not be any son or sons of said marriage, or if there shall be any such son or sons, and all and every the same son or sons, shall die without issue male before 21 and in either of the said cases there shall be one or more daughters then the said trustees should, after the decease of said *J. J.* but with but prejudice to the jointure of said lady *A.* levy 2000*l.* toward the portions of such daughter or daughters; to be paid in manner following, viz. If but one daughter, the whole 2000*l.* towards the portion of such only daughter; if two or more such daughters, then the said 2000*l.* to be equally divided between them; the said portions to belong to, and be an interest vested in such daughter or daughters, at their respective ages of 18 years, or days of marriage, unless the same shall happen in the said *J. J.*'s life time; then and in such case, at the end of six calendar months next after his decease, with interest from the time of his death, at 4*l.* per cent. for maintenance of such daughter and daughters, till the portions shall become payable.

Provided if any such daughter shall happen to die before her share of said 2000*l.* shall become vested, then such share shall be paid to the survivor or survivors; when and as their original portions or share shall become payable.

Provided that if any such daughter shall receive any portion provided for her as one of the younger children; and afterwards be entitled to a portion as provided for her on failure of issue male, then such daughter as shall have received such portion as a young child, shall upon failure of issue male receive only so much further portion as with the portion already received as one of the younger children, shall make up the portion intended for her, in case of failure of issue male, and no more.

Provided that no sale or mortgage shall be made of said term 500 years, for raising said portions for such younger son or sons, any such daughter or daughters, till some or one of the said portions become payable.

And also that the residue of the rents of said premises, over and above what will pay the yearly interest before appointed to be paid for the maintenance of such younger sons and daughters, and the cost of raising the same, shall and may, till some or one of the said portions

portions become payable, be received by such persons as shall be entitled to the immediate remainder or reversion of the said premises, exceptant on the determination of said term of 500 years.

Provided that if there shall not be any such younger son or sons, or daughter or daughters, who shall live to be entitled to any such portion as aforesaid, or in case all the said portions and interest or maintenance money appointed to be raised shall be raised, then and in either of the said cases (the trustees charges being paid) the said term to be void.

The marriage took effect; and the said Mr. J. died November 1752, leaving only one child, a daughter, now of the age of 17, having given all his personal estate to Lady A. J. his widow, without making any disposition of his real estates, whereby Miss J. the daughter, as heir at law of her father, became seized of the settled estates, *subject* to the several terms, and Lady A. J. is also dead, all arrears of her rent charge being paid, or provided for. Miss J. was maintained and educated by her mother, out of the profits of the real estate.

A treaty of marriage is on foot for Miss J. and as she is under age, no settlement can be made of her real estate.

Query. Is this charge of 2000*l.* extinguished by Miss J.'s taking the settled estates as heir to her father, or does it remain a charge? Can it be secured to the intended husband by any act of the trustees; or in case of Miss J.'s death under age, and before any disposition can be made of her real estate, will it remain a charge to which the intended husband of Miss J. will be entitled? By what means can it be recovered; and from what time will it carry interest?

Opinion. Mergers of estates are not favoured much in equity; and I am of opinion, that this sum of 2000*l.* was secured by a term of years; that the descent of the legal interest upon her of the fee of the reversion, will not extinguish the equitable right that Miss J. had in this sum, by virtue of the trust term of 500 years vested in the trustees; for this was not any merger at law by the conjunction of the estates, they being vested in different persons. — And tho' Miss J. if she was of age, might compel the trustees in a court of equity to surrender the term to her, in order to merge it; yet as she is an infant, a court of equity ought to do for her that which is best for her interest: at present she has not any vested interest in the 2000*l.* but as it is payable at 18 or marriage. — If she marries, then I think that the portion will be a vested interest in her, and that she and her husband may direct the trustees to raise it for her use. — This portion was originally intended to prefer her in marriage. It may now

be clearly vested in her, because of her title to the reversion, which she cannot raise any money upon, nor settle, by reason of her inability of infancy.—I therefore think that after her marriage, or after she attains 18 years of age, it may be raised, and that her husband will be entitled to it at her marriage, as a personal interest vested in her; or if she should be sole she may dispose of it by will: or otherwise her personal representatives will be entitled to it. If she be in possession of the estate by her guardians, and receives the profits of the whole, I think that she then in effect receives the interest; or her guardians (if she has any such) for her use; and therefore the interest of every charge ought generally to be kept down by those who receive the profits. She cannot receive them and charge the estate with interest of the 2000*l.* for then she would receive it twice in effect.

If Miss marries, I think that if the trustees decline raising the money, the husband may compel them to do it by a bill in equity, the case of the husband will be much stronger if he makes a settlement on the lady in consideration of this portion.

And it is declared, that the assignment of the said mortgage of 1000*l.* and the transfer of the said 1000*l.* Bank annuities, made to the said trustees, was so made to them upon the trusts following *viz.*

In trust for the said Lady A. J. till the marriage, and after the said marriage.

Then, in trust for the said J. J. for his life; and after his decease,

Upon trust to pay the same to all and every the young son or sons, daughter and daughters, in case of issue-male, to all and every the daughter and daughters, in case of failure of issue male, at such times, in such shares, and the shares to vest in such manner, and with such benefit of accrever as before mentioned concerning the said 2000*l.* to be raised by virtue of the said term of 500 years, the same being intended for the augmentation of the portions to be raised under the said term. But in case there shall be such son or sons, daughter or daughters, who shall live to be entitled to the portions before mentioned for them, Then,

In trust to transfer and pay the said 1000*l.* Bank annuities to the said J. J. his executors, &c.

A proviso that the said trustees with the consent of the said *J. J.* during his life may call in the said 1000*l.* secured by mortgage, and sell the said 1000*l.* *Bank annuities*, and lay out the money arising by the sale on other real or government securities, upon the trusts as they were before.

The 1000*l.* secured by the *Irish* mortgage, with the interest thereon, has, since Mr. *J.*'s death, been paid off and received by Lady *A. J.* and not accounted for to the trustees.

The trustees also transferred the *Bank annuities* to Lady *A. J.* without security.

Lady *A. J.* is since dead, having bequeathed her personal estate to Lord *G.* Lord *N.* Mr. *A.* and Col. *J.* her executors upon trust.

They have proved her will.

Query. Must these sums be replaced to the trustees under the settlement of the executors of Lady *A. J.*'s will? And from what time must they account for the interest on them?

Opinion. The trust of these sums of 1000*l.* and 1000*l.* was declared to Mr. *J.* the father for life, with remainder to the younger children if a son, and to the daughter or daughters, if no son; so that the Lady *A. J.* took these sums under a trust to pay them to the sole daughter and child of Mr. *J.* As the trustees have now, I presume, sufficient effects of her Ladyship's to replace this money, I think that they ought to do so. Or if Miss *J.* should marry, then I think it would be vested in her as a personal interest, and that it may be securely paid to her and her husband upon their release or discharge.

I think they will be accountable for interest for all the time Lady *A. J.* had it in her hands; for her Ladyship might have laid it out either upon proper securities, or in the stocks, and then it would have carried an interest.

Lincoln's Inn, April 24 1767.

R. Wilbraham

C A S E,

A short time before the election at L. in 1754, Mr. M. (then under age), being desirous to serve the late Sir F. G. a candidate for L. desired Sir F. would purchase a burgage to be conveyed to some person who might vote for Sir F. Sir F. did accordingly contract with Dr. A. for a burgage for the consideration of — pounds, and Sir F. gave the Dr. his bond for — pounds and lawful interest; and the Dr. conveyed the premises according to the directions of Sir F. Soon after the election the Dr. was applied to by Mr. M.'s agent for an abstract of his title, which being produced some objections were made to it by Sir E. W. and the Dr. not answering the objections, the affair slept a considerable time, but Mr. M. being desirous to fulfil Sir F.'s agreement, (Sir F. being dead) gave his agent directions to prepare conveyances to be executed by the Dr. of the premises, and accordingly conveyances were drawn and Mr. M.'s agent's clerk waited upon the Dr. with the draft, which the Dr. consulted his attorney upon, who said the conveyance was not properly drawn, for that the Dr. had conveyed the estate to Mr. M. in whom the title then was. The Dr. was then desired to sign the bond or to give a copy, both which he refused; he afterwards wrote to by Mr. M.'s orders, to desire to be informed what was the consideration of the bond Sir F. gave him, to which letter he sent the following answer. "As he might not understand the question, or if he did, the tendency of it, he must desire to be excused from making any reply." The Dr. was afterwards, (viz.) at the last L. election, wrote to by Mr. M.'s order, and the conveyances were prepared and sent by a messenger to the Dr. which he was desired to execute, and he was assured by letter from Mr. M.'s agent that he would immediately after the election wait upon him with the consideration agreed for, and the Dr. was then informed, that the house being before conveyed to M. to vote at a former election, would be no objection, provided M. did not appear; the Dr. was also told in the same letter, that if he refused to execute such conveyance both Lady G. and Mr. M. should think themselves absolutely discharged from any obligation they might then be under of taking the burgage. To this letter the defendant sent the following answer (viz.) "I am very sorry that it is not in my power to oblige Lady G. and Mr. M. in conveying the burgage as desired, I have consulted an attorney on this occasion, and he assures me it is already conveyed to M. by direction of Sir F. G. I have no further interest in it. I wrote to Lady G. by Friday's post and acquainted her how the affair stood. I must confess I am not a little surprised that I am requested to do an act which I apprehend I cannot do with safety to myself, and which would, I conceive, have a very odd appearance should M. (was I to execute the conveyances now sent) producetho

those which are in his hands." The Dr. of late has been very pressing to have his bond discharged, and last term commenced an action against Lady G. upon which action he has declared, and to which Lady G. has demurred. But as it was Mr. M.'s intention to serve Sir F. at his election, he is willing to indemnify Lady G. but from the Doctor's behaviour in this affair is also determined, if possible to avoid payment of the bond, and taking the house, &c.

Observe, that this house has, since the Dr.'s conveyance to *M.* been conveyed to several others to answer the purpose of elections, and it is now not known who has the legal title to the premises.

1st Query. Upon the whole complexion of this case, what is the most adviseable method to take? And whether or no you are of opinion equity can assist, if it can, in what manner will it be proper to apply to the court, whether before or after judgment is obtained on the bond?

Opinion. I am of opinion, that no proper defence can be made against the bond for 200*l.* to Dr. *A.* he having conveyed the burgage to *M.* upon a *trust* for Sir *F. G.* nominally, but upon the facts stated to me *occasionally* for Mr. *M.* Lady *G.* as administratrix of her husband Sir *F.* is bound to pay the money; and in strictness, if the transaction is considered as the act of Sir *F. G.* the conveyance ought to be made by *M.* the trustee to the heir at law of the *ceſſui que truſt*. Mr. *M.*'s only defence is his minority, of which he *occasionally* will not take advantage. This I presume upon his known honour. AND therefore though the bond ought, as I have said, in strictness of law, to be paid by Lady *G.* and the conveyance to be made to Miss *G.* the heir. YET in justice, I think, Mr. *M.* ought to pay the money, and accept the conveyance.

2d Query. Can Lady *G.* upon the merits of this case, provided she pays to Dr. *A.* recover the same of Mr. *M.*

Opinion: I am of opinion, that in strictness of law, and the course of a court of equity, Lady *G.* cannot recover from Mr. *M.* by reason of his infancy at the time of the transaction in 1754. But I take it for granted he will not avail himself of that defence.

17 Nov. 1762.

C. York*

CASE.

C A S E,

24th Sept. **B**Y indenture of release (executed by bargain and sale for 1734. **B**one year) between *H. D.* Esq; of the first part, *A. M.* Esq; and *S. M.* (his only daughter) of the second part, *W. B. A. P.* *S. M.* and *W. M.* of the third part; the said *H. D.* in consideration of an intended marriage with the said *S. M.* and of the sum of — pounds paid to him by the said *A. M.* as and for the marriage portion of his said daughter, &c. did grant, &c. unto the said *B. P. M.* and *W. M.* ALL that mansion house in *D.* and all that farm distinguished by the name of the *House Farm* of the yearly rent of — pounds. TO HOLD to the said trustees their heirs and assigns for ever, To the following uses, (namely)

To the use of the said H. D. his heirs and assigns until the marriage.

Then, *To the said H. D. and his assigns during his life, with limitations.*

To trustees to preserve contingent rents. AND after the decease of the said H. D.

To the use of the said S. his intended wife for her life.

Remainder, To first and other sons in tail male.

To all and every daughter or daughters, and the heirs of their bodies, as tenants in common.

AND in default of such issue,

To the use and befoof of the heirs of the said H. D. on the body of the said S. to be begotten.

Remainder, To the use and befoof of the said H. D. his heirs and assigns for ever.

N. B. The said marriage took effect, and the said *H. D.* and *S.* are yet living, as also two sons of the said marriage, which are the whole issue, and there is no possibility of having more, being upwards of 60 years of age each.

The two sons are now of age, and one of them married and has several children, and both having occasion for money, have proposed a security of the reversion of the settled estate.

Query. Can the two sons by levying a fine of the reversion of the settled estate, make a good security thereof to a mortgagee, (expectant)

(expectant on the deaths of the settler and his wife) notwithstanding they should both happen to die in the life-time of their father and mother?

The reversion in fee is in neither of the two sons, for it never passed out of the father by the settlement, but still remains vested in him, and he only is legally seised thereof; and the father may at any time grant it to whom he pleases, or devise it away by his will: Wherefore I am of opinion that the two sons cannot make a good security to a mortgagee by levying a fine, or any other way.

Sept. 5, 1767.

W. Rivet.

C A S E.

April 3, 1748. *W. C.* by his will of that date, after giving divers lands to his neice *R. E.* absolutely gave, devised and bequeathed unto the governors of the Infirmary in the liberty of Westminster, three leasehold messuages situate in *Bennet-street, Westminster*, therein particularly described with their appurtenances, to the use and benefit of the said infirmary, subject to such estate in the same as by the last will of his deceased father, dated the _____ day of _____, his brother *G. C.* (who had then been in foreign parts for near two years, and was then supposed to have died abroad, and had not been since heard of) might have or claim therein: And ordered his executor as soon as convenient after his death, to transfer and assign the said leasehold premises and the lease by which the same are held to the said governors and their successors, or such person as the governors for the time being should appoint their executors, administrators and assigns, for the remainder of the term or terms as should be then to come, subject as aforesaid.

He also gave to the trustees of the boys charity school at *Hertford* 100*l.* S. S. stock, called N. S. S. A. stock, then standing in his name, and the interest thereof, to be due at his death, to be by the said trustees applied for the use and benefit of the said boys, and ordered his executrix to transfer the same as soon as convenient after his death.

He also gave to said trustees of the boys charity school 100*l.* to be by them applied to the use and benefit of the girls educated in the girls charity school at *Hertford*, and ordered his executrix to pay the same 100*l.* to the same trustees within three calendar months next after his decease; and gave to the reverend Mr. *N. H.* his japanned cabinet, then standing in the house he then lived in, with all things that should be therein at the time of his death; and also all his books and manuscripts, and all other his papers whatsoever (except such as

belonged to his real or personal estate or effects) to and for his the said *N. H.* own use and benefit, and appointed the said *R. E.* sole executrix thereof, and his residuary legatee.

By a codicil annexed to the said will, the testator after reciting that since the making thereof he had deposited in the hands of *Mr. H.* (one of the trustees of the said boys charity school) several drafts, bank and other notes, or bills for money, amounting in the whole to 173*l.* 17*s.* 1*d.* and also four blank lottery tickets in the year _____, released his said executrix from the said 100*l.* given by his said will to the use of the girls charity school; and directed the said *Mr. H.* to keep in his hands out of the said drafts, &c. or monies to be received thereon 100*l.* to be applied to the use of the said girls, as he should think proper.

He also desired the said *Mr. H.* to retain in his hands for his own use for the trouble given him 21*l.* other part of the monies or securities for money deposited in his hands as aforesaid (being therein mentioned to be the money that was at the time of making his said will, in the cabinet he had by his said will given to the said *Mr. H.* and then by the testator intended to remain therein till his death.

And he also directed the said *Mr. H.* to apply within twelve calendar months after his death, the residue of the aforesaid drafts, &c. and the money arising thereby among indigent people, in such manner as he and *Mr. B. T.* should think fit, without being accountable for the same to any person: And by his said codicil he gave all the said drafts, &c. unto the said *N. H.* for the uses aforesaid; and declared that no part of the said monies or securities for monies, should be liable to the payment of his debts or other legacies, it being his intention and will that his said executrix should pay all such small debts or sums of money, as he might happen to owe at his decease, out of his estates devised and given to her by his said will; and confirmed his said will in all other respects.

The testator received the said bills, drafts, &c. of *Mr. H.* and gave him a discharge for the same; and acknowledged thereby that he had no other demand on the said *Mr. H.* on any account.

The executrix cannot learn what the testator did with the money arising by the said bills, &c. otherwise than that *Mr. H.* informs her, that the testator told him that he went to *London* to place the said money or greatest part thereof in the funds: And that the executrix since the testator's death, finds there is standing in his name the sum of 312*l.* *N. S. S. A.* stock, 100*l.* whereof was purchased by the testator before the making of his will, and the remainder was purchased at three several times since the receipt of the said bills, &c. of *Mr. H.* and since the making of the said will and codicil.

N. B. The testator died the — day of — last.

Quir,

Query. Is the above devise of the three houses in *Bennet-street* within the intent of any of the *statutes of mortmain*? Is the executrix chargeable with the 100*l.* N. S. S. A. given to the boys charity school, or is not that bequest within the intent of any of the said statutes? And is she chargeable with the payment of the 100*l.* given to the girls charity school, or the legacy given to Mr. *H.* for his trouble, or to the residue of the money arising from the above drafts, to be distributed among indigent persons, all which were by the testator directed to be paid out of the depositums in Mr. *H.*'s hands; or is the taking of those depositums out of Mr. *H.*'s hands, which was deposited as a fund for payment thereof, a revocation of such part of the codicil; and if it is not a revocation for so much, is not the said legacy of 100*l.* given to the girls charity school, within the meaning of any of the *statutes of mortmain*?

Opinion. I think the devise of the three houses to the infirmary is void by the late statute. The bequest of the 100*l.* N. S. S. A. stock to the boys charity school is good, and the executrix chargeable with it. The testator's disposing of the bills and drafts was, I conceive, a redemption of the legacies given out of them; but if that was not a redemption or revocation, the bequest to the girls charity school is good, notwithstanding the late act.

Oct. 11, 1750.

D. Ryder.

C A S E,

W. 15. *T. S.* of *S.* in the county of *Worcester*, apothecary, by deed 1722. of marriage settlement, dated the — day of — made between the said *T. S.* of the first part, *E. C.* of the second part, and *W. W.* and *J. S.* of the third part, reciting a lease from the mayor, aldermen and citizens of the city of *Worcester*, dated the — day of — to the said *E. C.* her executors, administrators and assigns, for the term of — years, renewable every — years, according to the custom of the corporation, of certain lands and buildings in the said city, subject to the rents, covenants and agreements herein contained. It is witnessed, that in case of a marriage between the said *T. S.* and *E. C.* and that the said leasehold premises should be settled and conveyed in manner therein mentioned. The said *E. C.* in consideration as aforesaid, did grant, bargain, sell, transfer, assign and set over unto the said *W. W.* and *J. S.* their executors, administrators and assigns, the said premises and term, to hold to the said *W. W.* and *J. S.* their executors, administrators and assigns, for the remainder of the said term, in trust, to permit and suffer the said *E. C.* her

her executors, administrators and assigns, to receive the rents, issue and profits thereof, until the said marriage should take effect; and after the solemnization thereof, in trust for the said *T. S.* to receive the said rents and profits thereof during so many years of the said term as the said *T. S.* should live; and after the said *T. S.*'s death in trust for the said *E. C.* to receive the said rents and profits during so many years of the said term as she should live; and after her decease, in trust to permit and suffer such child and children of the body of the said *E.* by the said *T. S.* lawfully begotten and living at the decease of the survivor of the said *E.* and *T.* which by the rule of common law of *Great Britain*, should from time to time be heir and heirs of the body of the said *E.* by the said *T.* to receive and take to his, her and their own use and uses, the rents and profits of the said premises, during the remainder of the said term, after the decease of the said *E.* and *T.* and the survivor of them; and for want of such child or children of the marriage, and living at the decease of the survivor of the said *E.* and *T.* in trust for the said *W. W.* and *J. S.* and the survivor of them, and the executors, administrators and assigns of such survivor, to permit and suffer the executors, administrators and assigns of the said *E.* to receive the rents and profits of the said premises, during the remainder of the said term: And it is further agreed between the said parties, in case the said marriage should take effect, that the said estate and term of the said leasehold premises, should from time to time, and at all times thereafter, so long as the same might be done, be renewed and kept on foot, in such manner and for the like estate and term, as the same were then held or otherwise, according to the usual method of renewing such estate and to that end and intent that the aforesaid lease, made as aforesaid, for the said term of — years, and thereby assigned to the said *W.* and *J. S.* in manner aforesaid, should, within the space of — years be renewed, and from thenceforth from time to time at the end of every — years, from the commencement of the said lease, or within — months next after, be renewed constantly at the expense of the person or persons then being and enjoying the rents and profits of the said premises; and that upon every neglect of such person or persons obtaining such renewal, it shall be lawful for the said *W.* and *J. S.* and the survivor of them, or the executors, administrators and assigns of such survivor, at all times thereafter to renew the said estate and obtain one or more new grant or grants of the said premises and that the same should be vested in the said *W.* and *J. S.* and the survivor of them, and the executors, administrators and assigns of such survivor, to and for the same uses, trusts, intents and purposes thereby before raised: And the said *T. S.* in consideration of the said marriage settlement and agreement, and in regard that the said *T. S.* had not any real estate to settle as a jointure on the said *E.* and for making a competent provision for the support and livelihood of the said *E. C.* in case she should survive the said *T. S.* did for himself his heirs, executors and administrators, covenant, promise and agree with the said *W.* and *J. S.* their executors and administrators

and the executors and administrators of the survivor of them, in case the said marriage should take effect, and the said *E.* should survive the said *T. S.* that then the executors and administrators of the said *T. S.* should within — months after the decease of the said *T. S.* pay into the hands of the said *W.* and *J. S.* or the successor of them, the sum of 400*l.* upon trust that the said 400*l.* should be laid out in the purchase of lands or houses, to be settled and conveyed upon the said *E.* during her natural life, and after her decease, to the use of the heirs of the body of the said *E.* by the said *T.* lawfully to be begotten; and for want of such issue, to the use of the heirs of the body of the said *T. S.* lawfully to be begotten; and in default of such issue, to the use of the heirs of the said *T. S.* for ever. And upon further trust, until such purchase should be made, the said *E.* after payment of the said 400*l.* during her life, should have and receive to her use the increase and profit of the said 400*l.* but if the said *E.* should have issue living by the said *T.* and the said *E.* shall die before such purchase shall be made, then the said *W.* and *J. S.* their executors or administrators, until such purchase shall be made, shall and will dispose of the increase of the said sum of 400*l.* for the use and benefit of such person and persons as is or are to have the same land or houses so to be purchased, when such shall be conveyed and settled; provided that it should be lawful for the said *E.* and *T.* in case the said marriage should take effect, during their joint lives, by any deed or writing, under both their hands and seals, testified by two or more credible witnesses, to revoke, alter or change the aforesaid trusts or agreements of settlement of the said 400*l.* to be paid as aforesaid, and to nominate and appoint how and in what manner the said 400*l.* so to be paid as aforesaid to the hands of the trustees, should be settled or disposed of, as to them shall seem meet; and after such alteration, the aforesaid trusts reposed in the above-named trustees, as to the said 400*l.* shall cease; and that after the said *T.* and *E.* should have made such new nomination or appointment, it should be lawful for the said trustees to lay out, settle, or otherwise pay and dispose of the said 400*l.* and interest thereof, as the said *T. S.* and *E.* his wife should nominate, direct and appoint, &c.

The marriage took effect, and no appointment was made in the lifetime of the said *E.* and *T. S.* *T. S.* died about — years since, made a will, left issue, one son and one daughter, *W.* and *S. S.* before the death of the said *T. S.* married *W. W.* and also left his widow *E. S.* since dead.

By lease of the said leaschold premisses, bearing date the — day of —, between the said mayor, aldermen and citizens of the said city of Worcester of the one part, and the said *T. S.* of the other part, the said corporation, in consideration of the surrender of a lease made by the said corporation to the said *T. S.* of the said premisses, dated the — day of —; as also for the considerations therein mentioned, did demise, grant, set and to farm let, unto the said

said *T. S.* ALL the said premisses, with the appurtenances, *To hold* the said premisses unto the said *T. S.* his executors, administrators and assigns, after the feast of the Annunciation of the Blessed Virgin *Mary* then last past, for and during the term of —— years, &c.

These corporation leases are granted for —— years absolute, but at the end of —— years renewable for another term of —— years, paying —— years rent as a *fine*, and subject to the conditions therein contained.

T. S. by his last will duly executed, dated the —— day of ——, devised and bequeathed to his son *W. W.* the sum of 10*l.* to buy him mourning, to be paid him immediately after his death by his executrix out of his personal estate (he my said son *W. S.* having a provision made him by my wife *E. S.*'s marriage settlement, made before my intermarriage with her) devised and bequeathed unto his son-in-law *W. W.* his heirs and assigns for ever, immediately after his decease, ALL that his freehold and copyhold estate, and estates, &c. with the appurtenances, situated at *W*— in the parish of *M*— in the county of *S*—, my said son-in-law permitting my dear and loving wife *E. S.* and her assigns, to receive and take the rents and profits of the said freehold and copyhold premisses, to her and their own use and benefit, during the term of her natural life.

He likewise devised and bequeathed unto his dear and loving wife *E. S.* ALL and singular his messuages or tenements, buildings, lands and premisses, situated at *S*. aforesaid, and all other his real and personal estate whatsoever and wheresoever, not herein before disposed of, after payment of his just debts, legacies and funeral expences, to be at her disposal, as she shall think proper, by any deed or writing under her hand and seal, grant, convey, limit, declare, give or appoint, or by her last will and testament in writing by her duly executed, in the presence of three or more credible witnesses, give, devise and bequeath; and for want of such grant, conveyance, use, limitation, declaration, appointment, gift, devise and bequest as aforesaid, by his said dear and loving wife, that from and after her decease the said messuages, tenements, buildings, lands and premisses, at *S*— aforesaid, together with my personal estate, (after payment of his just debts, legacies, and funeral expences as aforesaid,) I give, devise and bequeath the same unto my son-in-law *W. W.* and *S.* his wife, their heirs and assigns, subject to the payment of an annuity or yearly rent charge of the sum of 10*l.* of lawful money of Great Britain, to my said son *W. S.* during the term of his natural life; and for want of issue of the body of the said *S. W.* by the said *W. W.* then I give, devise and bequeath the same to my right heirs for ever: and appointed his said wife *E. S.* sole executrix.

E. S.

E. S. widow of *T. S.* by her will dated the _____ day of _____, after payment of her just debts, and the just debts of her late husband, by her executrix, together with her funeral expences and legacy, *did* give, devise and bequeath all her household goods and furniture (except as hereafter is devised) unto her son *W. S.* and unto her daughter *S. W.* their heirs and assigns for ever, to be equally divided between them, share and share alike.

She did further give, devise and bequeath unto her said daughter *S. W.* her heirs and assigns for ever, and for her own separate use and disposal, notwithstanding her coverture, all her plate and wearing apparel, she paying unto her said son *W. S.* the sum of 10*l.*

I also give, devise and bequeath unto my said daughter *S. W.* who I hereby appoint sole executrix of this my will, all the rest, residue and remainder of my real and personal estate, which I shall die possessed of, and to her heirs and assigns for ever, and at her own disposal, notwithstanding her coverture; but subject to the payment of the 400*l.* to my said son *W. S.* according as it is provided for him in my late husband's marriage settlement with me; and also subject to the payment of the sum of 20*l.* a year to my said son *W. S.* during the term of his natural life, and to be paid him quarterly by equal portions; and also that my said son *W. S.* shall be at liberty to live and reside in the house now in the possession of *P* _____ without paying any rent for the same during his life, he keeping the same in repair.

The said *E. S.* made another will dated the _____ day of _____, and died the _____ day of _____, which said last will of _____ was found cancelled with the seal tore off, together with the name; and the will dated the _____ was found uncancelled, but no memorandum or any notice taken that such will had been resigned, sealed and dated after the making void of the will of the _____.

1st *Query.* By the words of Mr. *T. S.*'s will, had his widow Mrs. *E. S.* any right to dispose of either the real or personal estate, or any part (which Mr. *T. S.* died possessed of) after her decease; the devise being to her without any limitation of time, or to her executors, administrators or assigns: And if she had a right to dispose of the real or personal estate, or any part, did she not die intestate, as the last will made is cancelled, the will of the _____ day of _____ left with the name and seal on, but no memorandum that such will was re-executed, after cancelling the last will, neither was it ever re-executed?

Opinion. I am of opinion, that by Mr. *T. S.*'s will, if it was properly executed, *E. S.* his widow, had full right and power to

to dispose of by her will of all the lands and premisses at S— and all other his real and personal estates not before disposed of by his will, after payment of his debts, legacies, and funeral expences; and I think the will of the —— day of ——, if properly attested, is a valid disposition of all her real and personal estates, and likewise of that part of her husband's real and personal estates, of which he gave her the power to dispose; for by the *Statute of frauds and perjuries*, it is enacted, that no devise in writing of lands and tenements shall be revoked, otherwise than by some other will, or writing declaring the same, signed in the presence of three or four witnesses, or by burning, cancelling, tearing or obliterating the same by the testator himself, or in his presence, by his directions: It is therefore free from doubt, that the will of the —— day of ——, as it is above stated, is no revocation of the will of the —— day of ——.

2d *Query*, There never has been any trust made use of or carried on relative to the marriage settlement and leasehold premisses, but the leases of such leasehold premisses have been from time to time granted by the mayor, aldermen and citizens of the city of Worcester, to Mr. T. S. his executors, administrators and assigns, absolute, and not to the trustees plaintiffs in the settlement; therefore will not Mr. W. W. and S. his wife be entitled to these leasehold premisses, by the words of the will of Mr. T. S. (viz.) together with my personal estate, and under such devise cannot Mr. W. recover that estate by *escheat*, or by what other means can Mr. W. recover the rents of such premisses, W. S. being in the receipt thereof; or if such leasehold estate will in equity go according to the clauses in the marriage settlement, will not Mr. W. and his wife be equally entitled with W. S. the same being a chattel; and as Mr. W. S. has received the rents of the leasehold premisses for the last five years, without any authority from Mr. T. S. or Mrs. E. S. after the death of T. S. is not Mr. W. and S. his wife entitled to recover such rents (of the said T. S. he never accounting for such rents) as residuary legatees of T. S. and by what means must Mr. W. and his wife recover the same, or must Mr. W. recover the same of the tenants as rents in arrear?

Opinion. The lease from the city of Worcester, though renewed in the name of Mr. S. will be as effectually governed and controlled by the settlement of the —— day of ——, as if it had been renewed in the names of the trustees, for the purpose of the trusts contained therein; Mr. T. S. had no right to dispose of those premisses by his will, they belong wholly to W. S. the son, upon the death of his mother, as his absolute property; they being to go upon the deaths of T. S.

T. S. and his wife, to such child of them, who would by the rule of the common law be heir of their bodies, which description is compleat in W. S. the son, and Mrs. W. will not be entitled to any share thereof, although the lease is a chattel. Mrs. S. W. has a right to recover the *five years* arrears of rent from the tenants, as executrix to her mother and father; for as her mother was sole executrix of her father, and she is sole executrix of her mother, she by law becomes sole executrix of her father, and consequently may recover the rent in arrear from the tenants. But it is incredible that W. S. should receive rent for *five years* without any authority from his father or mother, and if it appears that the father and mother knew of such receipts and acquiesced in it, Mrs. W. will not easily recover it from the tenants: but if her brother cannot make out some proper discharge from his father and mother for the *five years* rent, either by gift from them to him, or otherwise, I think the rest may be recovered from her brother; as to what was received in her father's life-time, as his executrix, in her mother's life-time, as executrix to her, by a common action; and unless the brother can prove some discharge by gift or otherwise from his father or mother, he is without defence.

3d *Query.* Mr. T. S. did not die possessed of personal estate (except the leasehold premises) more than sufficient to pay his debts, but his fortune consisted of lands and buildings, (which his wife E. S. received the rents, issues, and profits of during her life, according to the purport of his will) no buildings, lands, or premises were ever purchased by the said T. S. to any such uses as mentioned in the marriage settlement. Can W. S. the son of the said E. and T. S. or the legal representatives of the survivor of the said W. and T. S. (the trustees in the settlement) come upon any part of the estate or estates purchased by the said T. S. and in his own name, and to his own use, without any such trusts or uses as mentioned in the settlement? Or can the said W. S. or the representative of the said W. and T. S. compel Mr. W. and his wife to raise said 400*l.* out of the estate, or any part purchased by the said T. S. deceased, and to go to the uses mentioned in the clause in the marriage settlement? and if such 400*l.* is liable to be raised, is not Mr. W. and his wife equally entitled with W. S. in such sum of 400*l.*

Opinion. I am of opinion, that by virtue of Mr. T. S.'s covenant in the marriage settlement, that W. S. the son is entitled to the 400*l.* to be raised in pursuance of such settlement; and that the representatives of the surviving trustee are specialty creditors of T. S. for that sum of 400*l.* and may go upon

any part of the estates purchased by the said *T. S.* in his own name, and may compel Mr. *W.* and his wife to raise 400l. out of all, or every part of the estates, purchased by *T. S.* to go to the use of the marriage settlement; and Mr. *W.* and his wife are not entitled with *W. S.* to any share of such 400l. and if *W. S.* was to bring a bill in *Chancery* against *W.* and his wife, to raise and pay him the 400l. in specie, as he is tenant in tail of the land to be purchased with that sum, and could by a fine acquire the absolute property of such land, I think the court would order him the payment of the money.

4th Query. If Mr. *W.* and wife are entitled under the will of Mr. *S.*, Mrs. *S.* thereby not having a disposing power after her death, or Mrs. *S.* dying intestate, validates the title of the real and personal estates in Mr. *W.* and wife, What method must they take to vest the premises to such uses as they shall think proper? Mr. *T. S.*'s will was proved by *E. S.* Mr. *W. S.* upon the death of *E. S.* possessed himself of a considerable share of the personal effects of the said *T. S.* *E. S.* did not administer to his effects, or deliver any schedule thereof, Must Mr. *W.* and his wife administer to the effects of the said *T. S.* as residuary legatees? And how must Mr. *W.* and his wife recover such effects, or the value thereof?

Opinion. The first part of this *query* is answered, by having given my opinion, That Mrs. *S.*'s will, if properly executed, is valid; and as Mrs. *W.* is now executrix both of her father and mother, she may call upon her brother to account to her for her father and mother's personal estates, and recover any thing from her brother, that he has received of their effects, by a common action, as an executrix; and she is to administer her father's estate with exactly the same power, as if she had been named the sole executrix in his will.

5th Query. Mr. *W. S.* is in possession of the messuage devised to him by the will of *E. S.* to live and reside in for his life: If Mrs. *E. S.* had not a disposing power, or died intestate, What must Mr. *W.* do to get Mr. *W. S.* out of possession, and to recover rent for the same, since the death of *E. S.*

Opinion. Mr. *W. S.* is well entitled to the possession of the messuage for life.

2d. Jan. 1768.

C. Sayer.

CASE.

C A S E.

April 17, **L**ORD S. by indenture of lease demised the premises in question, (which are of little value) to **W. B.** his executors, &c. for 99 years, now determinable on the death of **J. B.** his son.

12th Sept. 1759. The said **W. B.** in consideration of 10*l.* did assign the said premises (by way of mortgage) to **J. S.** his executors, for the remainder of the said term, determinable as aforesaid.

N. B. The executors of the said **J. S.** (now deceased) have the said lease and mortgage in their custody.

The said **W. B.** has been dead about 5 or 6 years; since whose death the said **J. B.** has been in possession of the said premises.

The said **J. B.** in the life-time of his father, and to Sept. 1764, interest for the said 10*l.* and now being called upon by the executors of the said **J. S.** to pay off the principal and interest due on said mortgage, pretends that his father **W. B.** (the lessee) about 5 years since, in consideration of love and affection, assigned the premises to him for the remainder of the said term; and that the mortgage is of no effect, his father having no interest in the premises at the time of making the same, therefore refuses payment of the said money.

Please to observe, that at the time this assignment was made to son, (if any such) the lease above-mentioned was delivered to him, and afterwards by him returned to the father for the purpose of paying the said mortgage, and which was made without discovering the previous assignment to the son, (if any such.)

B. As the premises are of small value, and held but by one life, we shall not seek relief by *bill in equity.*

Therefore, as this case is circumstanced, and as **J. B.** was privy to the mortgage and paid the interest during the life-time of his father and the mortgagee, if it is not to be apprehended the executors will recover in *ejectment?* Note. The father died insolvent.

I am of opinion that the assignment of the lease to the son is void, as a fraudulent conveyance within *stat. 27 Eliz. c. 4.* as against the mortgagee and his representatives, and therefore that the executors may recover the premises in *ejectment.* — It makes the case stronger, that the lease itself

is in the possession of the mortgagee, and that *J. B.* the so and pretended assignee paid interest upon this mortgage, which last circumstance I advise the lessor of the plaintiff to be prepared to prove upon the trial of the ejectment.

May 15, 1767.

J. Burland.

C A S E.

PAUPER, aged about 72, born at *H. N.* in *B.* and had been hired to and lived in several services.

Last Michaelmas (old style) was 38 years since, to the best of his remembrance, he was hired to one *Mr. B. M.* of *W. I.* in *B.* yeoman, the term of one year, served the whole year, and received all his wages, and continued in the same service under yearly hirings for 6 7 years, when he married, and was then hired by the said *B. M.* a weekly servant, and continued in his said master's service in *W.* aforesaid by the week, for upwards of 9 years more.

From *W. I.* pauper removed to *S. S.* in *O.* without a certificate (and where he is now resident, and rented) a house and premises *4L.* a year, and kept sheep to pen to hire, but never paid any rent or taxes, or served any office in *S. S.* aforesaid.

Before he came to *S. S.* he purchased part of a small estate in *C.* (under *30L.*) and some years afterwards, he had the other left him, the whole amounting to *2L. 5s.* by the year. At the same time he was possessed of two small life-hold estates in *H. N.* aforesaid, one of the rent of *1L. 5s.* the other of *4L.* a-year. That soon after, he possessed of the said estates he sold that at *C.* but for how much money does not appear. The other two in *H. N.* he now lets, and receives rent; and that the quit-rent and land-tax have been always deducted of his rent by the tenant, and that on tenant's complaining of the gain's being hard, asked pauper to allow something towards the poor rate in *H. N.* and that he has allowed money to his tenant on that account, but knows not whether it was the whole the premises charged at to the poor, or whether pauper was rated and assessed in his own name, cannot say, as he never paid the same to the officers of the parish, but allowed the same to his tenant.

Pauper and his wife are both old and infirm, and in want of election, and the parish of *S. S.* and having applied to *W. I.* and *H. N.* they disown them as parishioners.

Against the above settlement by service, it is urged, that the estates in *H. N.* and paying as above, must be a settlement in the parish. On the contrary, please to observe, that there has

been any residence of the *pauper* since he had those estates, either in the parish of *C.* or *H. N.* And it is said, without residence he could gain no settlement.

Please to give your opinion hereon.

Opinion. It is extremely certain, that residence, at least for *forty days*, in the parish where his estate lies, is essentially necessary to the gaining a settlement; otherwise, a man by having 5 or 10 different houses in different parishes, would gain 5 or 10 different settlements at a time; besides, the word *settlement*, is a term relative to the person only; and it would be strange to say a man can be settled where he never resided. For these reasons I think the settlement is at *W. I.*

May 15, 1767.

G. Nares.

C A S E.

J. G. had a sister courted by *T. R.* his father's apprentice, who got her with child, but refused marrying her, her father not complying with his terms.

Some time after her delivery, her said brother, who was entitled to the reversion and inheritance of an estate in fee after the death of his father, proposed giving *R.* 100*l.* if he married her; which money was to be secured to be paid him within *six months* after the death of his father, that the said estate came into his possession.

This was accepted by *R.* a bond was given by the said *J. G.* to *R.* for the said 100*l.* payable, without interest, within *six months* after the death of his father; and they were married.

J. G. died 4th *October*, 1766, and his father not till the 1st *April*, following, so that he was never possessed of the estate. He died greatly in debt, intestate, leaving a widow and an infant heir; and his estate and effect are insufficient to discharge his bond debts, independent of this.

The administration of his personals was granted the 11th *November* 1766, by the ecclesiastical court of the diocese to *three* of his bond creditors, who are enjoined by bond, to satisfy his creditors by specialty in proportion to their respective debts, and so far acted as to sell and dispose of a considerable part of the effects, and make one division, which division was not made till the 11th *May* 1767, and then the administrators had no knowledge of this bond, or till the

the month of November after, that it was demanded by *R.* who was during this interval in *L.* a soldier in the guards. There are assets undivided sufficient to pay *R.* his proportion with what has been paid the other bond creditors.—Your opinion is desired.

Query. Whether the bond to *R.* would be considered voluntary, and (under the circumstances of this case) void against the bond creditors; or whether the administrators must pay him in proportion with the bond creditors, according to the condition of their bonds; or how otherwise must they act.

Opinion. I conceive the bond was for a good consideration, and cannot be considered as voluntary; and, that the administrators are obliged to pay *R.* equally in the same proportion with themselves and the other bond creditors.

14th April 1768.

W. Rivet.

C A S E.

Green v. Vernon, an Attorney.

WHEN *G.* applied to Mr. *V.* first, he desired *V.* to recover a debt, of which *G.* delivered *V.* his bill against *W.* which was under 40s. *V.* then informed him he must sue for his debt by common law in one of the courts at Westminster, and that there was not any other method; for that he could not get it by proceeding in the *county court*, or any *hundred court*, the defendant being a parson and not a housekeeper, and no distress could be taken by proceeding in a *county court* or *hundred court*. An action was brought in the *Common Pleas*; the cause was brought on to be tried at *Worcester summer-affizes*, 1763; *V.* at the *affizes* told *G.* the best way would be to enter into *arbitration bonds*; for as the debt was under 40s. the court would shout at them upon the trial, and he could not recover costs: so *G.* and *W.* entered into *arbitration bonds* to leave it to Mr. *J. W.* of *B.* Mr. *H.* of *H.* *arbitrators*, and Mr. *I.* of *B.* *umpire*. Meetings were had, but no award was made; the *arbitrators* declared the debt *just*, but being under 40s. could not tell how to give costs for the plaintiff *G.* so the *arbitration* dropped. *G.* has from time to time applied to *V.* to bring on the cause to be tried, and *V.* has constantly promised that he would, but never has.

About a month before the last *affizes*, *V.* pretended to *G.* that he would bring on the cause to be tried at the last *affizes*, and ordered *G.* to bring his witnesses to *Worcester* at the *affizes*: *G.* had his witnesses in readiness, but on the *commission day* *V.* informed *G.* that he must not take his witnesses to the *affizes*, for that the cause could not be

tried, by reason the defendant *W.* was entitled to a *term's* notice of trial, the cause being of long standing; so then plaintiff *G.* was put off again, and obliged to go to his witnesses to tell them not to go to *W.*

In *August* 1766, the plaintiff *G.* applied to his attorney *V.* for him to bring on the cause to be tried at the present *assizes*, and that he would have money in readiness against the *assizes* to defray all expences. *V.* promised it should be brought on, and *G.* has still continued going to *V.* every week or fortnight ever since, ordering and desiring *V.* to bring the cause on to be tried at this present *assizes*, which *V.* has constantly promised.

On *Sunday* last was a week, and the *Sunday* before that, *G.* went to *V.* still desiring him to bring on the cause, and took with him *ten guineas* for that purpose, but *V.* did not receive the money, but ordered *G.* to bring it to the *Star and Garter* in *W.* at the *assizes*, and there to bring his witnesses, and that the cause should be tried.

Now *G.* has brought his money and his witnesses to the *Star and Garter* in *W.* where they have attended according to *V.*'s directions, but no cause is entered with the *marshal*, nor is such cause intended to be entered.

This is not the only treatment that *G.* has received from *V.* On the 21st *Sept.* 1765, *V.* delivered his bill to *G.* to the amount of *23l. 4s. 6d.* in this cause, and gives him credit for *8l.* which he received of *G.* and there remains a balance to *V.* of *15l. 4s. 6d.*

The 18th *January* 1766, *V.* issued out a *writ* from the *King's Bench*, at his own suit, against *G.* a copy of which *G.* was served with in *Easter term* 1766, a *declaration* was filed for his, *V.*'s bill of *costs*, *judgment* was signed by default, and on the 28th of *August* 1766, a *writ of inquiry* was executed at the *Talbot* in *S.* after which *final judgment* was signed; ever since *V.* has had *fieri facias* and *writs* against *G.* which has obliged *G.* to go out of his neighbourhood, or otherwise he would have been sent to *gaol*, and has been obliged to lie out of his business, all which he has entirely lost, and which has been his entire ruin, and he durst not venture to be at home, only on a *Sunday*.

Query. What is the best method Mr. *G.* can take for satisfaction of *V.*? Must he move the court of *King's Bench*, wherein *V.*'s action is brought against him? Is it adviseable that *G.* should stand in *V.*'s way to be arrested? or should he pay the money if he can raise it? or should he go to *gaol* for a few days?

Opinion.

Opinion. I think the most advisable method for *G.* to pursue in order to obtain satisfaction for the very gross ill usage he has met with from his attorney, is to move the court of King's Bench in the cause of *V.* against *G.* upon affidavits particularly setting forth the circumstances above stated, for a rule to stay execution in that cause, and that *V.* may answer the matters of the affidavits; and if on hearing both sides, the case shall appear to be of the complexion here represented; I make no doubt, the court will animadvert very severely on Mr. *V.*'s behaviour, and see justice done to *G.* I see no peculiar advantage it will be of to *G.* to permit himself to be arrested.

April 6, 1767.

E. Bearcroft.

C A S E.

August 20, *S. H.* by her will of this date duly executed and attested, 1762. gave and devised unto *T. M.* and *E. H.* all her messuages lands, tenements and hereditaments whatsoever, with all and every the rights, members and appurtenances thereunto belonging, situate, lying and being within the parish of *N. E.* or elsewhere, as well leasehold as freehold, whereof or wherein she then was or should be seized, possessed, or any ways entitled unto, either in possession or reversion, and whereof she had power to dispose, together with all the rents, issues, and profits thereof, *To hold* the said messuages, lands, tenements, and hereditaments, with the rents, issues and profits thereof, unto the said *T. M.* and *E. H.* their heirs, executors, administrators and assigns; *In trust*, nevertheless, that they the said trustees, and the survivors of them, their heirs, executors and administrators, should from time to time pay over and apply the rents, issues and profits, of all and singular the said messuages, lands, tenements, hereditaments and premises unto her daughter *E.* then the wife of *G. H.* since deceased, for and during the term of her natural life, for her separate use and disposal; and from and after her decease testatrix gave and devised the said messuages, lands, tenements, hereditaments and premises, with the appurtenances, unto her grandson *R. H.* now about 16 years of age, only son of the said *G.* and *E. H.* for and during the term of his natural life, and from and after the determination of that estate, she gave and devised the said premises with the appurtenances unto the said *M.* and *H.* and their heirs, during the natural life of the said *R. H.* *In trust* to preserve the contingent estates, &c.

And from and after the decease of the said *R. H.* she gave and devised the said premises with the appurtenances, to his first and other

second sons in tail general, and for default of such issue to all and every his daughter and daughters in tail general as tenants in common, and in default of such issue she gave and devised the said premises with the appurtenances, to her own right heirs for ever, and the residue of her estate, monies, securities, goods and chattels, she gave and bequeathed to the said *M.* and *H.* their executors, &c. with full power for them or the survivor, his executors, &c. to place the same out at interest on real or other securities, the interest and proceed thereof, was to be applied and paid to her the said daughter *E. H.* for her life, for her separate use and disposal, and from and after her decease, the testatrix gave the residue of her said estate, monies, &c. unto her grandson *R. H.* his executors and administrators, and nominated the said *M.* and *H.* executors upon the trusts and for the purposes aforesaid.

At the death of the said *E. H.* the said *G. H.* her husband as father and not guardian for the said *R. H.* possessed himself of the said estates; but unhappily for the child he has not acted as such.

He has cut down and sold quantities of timber, spent the money, and dug up five or six acres of the meadow for the sake of advancing the present income, which after a few years will greatly be reduced within the former rent; suffered the buildings to decay for want of repairs, and the whole of the estates to run to ruin; but his unnatural behaviour extends still farther, he has totally neglected his education, having never kept him to school more than a year and half, which was some time ago, and since this he has been at home with his father, under the management of a whore he keeps in his house of the most abandoned kind, both in conversation and indecent behaviour. This wench behaved very ill to him, and did not allow him necessaries. about half a year ago he left his father's house, and went to his uncle the said *E. H.* his mother's first r's husband, having no nearer relation, who received and cloathed him, as he was quite ragged, and has maintained and kept him to school ever since.

The boy being desirous that his uncle *H.* should have the care of his person and estates, and Mr. *H.* being inclined to serve him, if he can be indemnified against the cost of the appointment.

Query. Your opinion is desired, whether the father can by any and by what method be removed from the guardianship of his child and the possession of his estates, and Mr. *H.* be appointed for him, and by whom must the expences be defrayed, whether out of the chattels in Mr. *H.*'s hands or out of the rents and proceed of the estates and chattels, or will the same be a lieu or charge on the freehold and leasehold estates, if not, or not payable out of the principal money, but only out of the rents and interest, should the minor die before it's

satisfied, can it then be obtained? If the application should not be attended with success, can Mr. *H.* applying to the court of equity at the boy's instance, obtain the costs of attempting to procure the appointment?

The personal estate now in Mr. *H.*'s hands amounts to about 300*l.*

Opinion. The possession and management of the estates may be taken from the father, by filing a bill in equity in the name of *R. H.* the infant, by any next friend, his uncle Mr. *H.* may nominate and which bill should be brought against the father and Mr. *M.* and Mr. *H.* the trustees and executors, named in the will of the testatrix. And it should be thereby prayed, that the father may account for the rents and profits of the estates, received by him, and the money raised by timber, and may pay what shall be found due from him into the bank, to be placed out in the accountant general's name for the benefit of the infant, and that a receiver may be appointed of the freehold and leasehold estates, with the usual power to let and set the same. And as against Mr. *M.* and Mr. *H.* praying to have the accounts of the personal estate taken, and to have the same placed out for the infant's benefit.—And that a proper allowance may be made for his maintenance and education for the time past since he left his father, and for the time to come, until he shall attain his age of twenty-one years.—If such bill is filed, Mr. *H.* may propose himself as receiver, and I think the master would appoint him, as I see no objection that can be made to him; and I think an allowance would be made for the infant's maintenance and education, and directed to be paid to such person as has or shall maintain him, and that Mr. *H.*'s costs and all other parties to the suit except the father's should be directed to be paid out of the infant's estates, such as relate to the real estates out of those estates, and such as relate to personal estates, out of the personal effects.—And as I conceive Mr. *H.* can run no risque in case the infant should die before he attains twenty-one, as he would have a right (as I conceive) to retain the costs of such suit out of the trust entrusted in his hands.

Jan. 1, 1768.

E. Hopkins

CASE.

C A S E.

ON Saturday May the 23d 1767. four ewes and five lambs were brought to N—— P—— by R. P. which had been straying in the parish of N—— two days, and B. the p—— keeper had them cryed on Monday the 25th of May, in B—— St. P—— being market day, and took them out of the pound into his orchard in the said parish of N——, and they lay there till Wednesday in the morning, when J. C. came to B. and told him they were his master D.'s on which B. said as follows, he might have them, if he would pay the charges, and told him the charges were, *taking up* 1s. *luping* 1s. *wathering* 4d. *crying* 4d. and *pounding* 2d. if he would take them away then, else there would be more charges for keeping them, then he went away, but returned with another man at eight at night, being upwards of twelve hours from his first coming, when he asked B. if he would let him have them, which B. told him he might have them, if he would pay the money, which was then but 2s. 10d. C. then pulled out the money, and threw down 1s. in one place, 1s. in another, and 1s. in the third place, and told him to take what he would, B. then told him he would not stoop to him, or his master, but if he would give him the money up into his hand, he would take it; but C. refused and made many words; B. told him if the sheep were not taken away that night, he would be paid sixpence more for keeping, and that he would carry them the next morning to the duke of B.'s at A——, C. after some time took up his money and went away and never returned again, and the sheep was now in A—— park belonging to his grace the duke of B——, lesee under the crown of the manor of the —— of N——, parcel of the honor of B—— and of the dutchy of C——, and also steward and bailiff of the same manor, and by 1d. lease entitled to one half of the value of all waifs and strays arising from the said manor, and the crown to the other half.—Part of A—— park lies not three miles from N—— pound.—Afterwards D. served B. with a copy of a *latitat*, but has not declared thereon.

On the fourth of *August*, ——, and not before, D. applied to the sheriff of H—— for a replevin warrant, which was granted to him, and directed to the constables of N——, and W. P. one of the sheriff's bailiffs or officers, but the sheep being out of the parish of N——, D. has applied to the sheriff for a return that they are cloined, which at present the sheriff has refused, being told where the sheep now are.

It is apprehended, that D. will apply so as to get a writ of *writham*, or else he will enter his graces park, which lies in two counties
¶ A a 2

ties and three parishes, but not in the parish of *N.* so that when they come to take the sheep, it may so happen, that they may be in a different county,

Since the sheep have been in *A*—— park, one of the lambs is stolen or strayed, so as not to be found, and one of the sheep is dead of the rot.

N. B. Since the lamb was stolen, the other sheep and lambs have been appraised by proper judges, and a value set on them,

Query 1st. Is the tender made by *C.* as before stated a good tender, and can *B.* as pound keeper, under a certain written appointment, justify the detaining of the sheep and lambs? If he can, must he justify as a servant to the crown, or to the duke of *B.*

Opinion. The tender is very sufficient according to the manner of it, and it was a very great fault in *B.* in not taking the money, when he might by stooping have had it; the tender appears to be sufficient in quantity, for *B.* could not, as I apprehend, demand any thing more than for the keeping and calling, tho' I doubt his right to the latter matter, and I am of opinion he could not demand any thing for the taking up of the estray or weathering it, and that he cannot justify the retaining the same after the tender.

Query 2d. As the lamb that was lost was kept in *A*—— park, which is paled round, where the rest that are living now are; will *B.* or the duke of *B.* or either of them be answerable for the loss of it, or any of the others which are dead?

Opinion. I think he will be liable to answer for the lamb lost, and the sheep dead, because his denial to restore them was a conversion, and the value must be fixed from that time.

Lincolns Inn, 10th Dec. 1762.

E. F.

C A S E

C. P. Esq; by his will dated the 3d. Feb. —, after bequeathing an annuity of 33*l.* to his sister *J. P.* for life, payable out of his estates at *C*——, *W*—— *W*—— and *H*——, gave to *A. P.* son of his brother *J. P.* and to the heirs of his body, all those his last mentioned estates, and if he died under age, the testator devised, the same to *A. P.* son of his brother *A. P.* and the heirs of his body, and in case both nephews should die under age, then the testator devised the said estates to his brother *J. P.* and his heirs.

A. the son of *J. P.* hath attained the age of twenty-one but is not the heir at law of testator.

Query. Can *A.* the son of *J. P.* by levying a fine, create a fee, or is a recovery necessary for that purpose?

Opinion. *A.* the son of *J.* being only tenant in tail, and not having the immediate reversion in fee in himself, I am of opinion that a recovery is absolutely necessary to procure him the fee simple of the estates devised.

30th, Feb. 1768.

Wm. Rivett

C A S E.

4th March, 1765. **I**NDENTURE between *W. G.* and *E.* his wife of the one part, and *J. T.* and *G. W.* of the other part, reciting that the estate and effects the said *E. G.* was possessed of at the time of her marriage with the said *W. G.* which was then lately solemnized, were estimated at the sum of 200*l.* after payment and satisfaction of her debts, and that the said *W. G.* previous to the said marriage, consented and agreed to settle the said 200*l.* upon the trusts hereinafter mentioned, but being then incapable of advancing the same, did by his bond of equal date therewith, engage for the payment thereof to the said *T.* and *W.* on the 4th of September with interest at four per cent. On which security *T.* and *W.* by the direction of *E. G.* were to permit *W. G.* to continue it during her life. *It is therein witnessed, declared and agreed,* that the said 200*l.* should remain, continue, and be, to and upon the following trusts, (that is to say) *In trust* for all and every the three children of the said *E. G.* by *J. B.* her former husband, namely *A. B.* *E. B.* and *S. B.* in equal shares as tenants in common, at such time or times as the said *E. G.* notwithstanding her coverture should by deed or instrument in writing duly executed and attested, direct or appoint. And in default of such appointment, at the death of the said *E. G.* *In trust* for all and every of the said *A. B.* *E. B.* and *S. B.* in equal shares as tenants in common, to be divided betwixt them at the death of said *E. G.* *And it was* thereby declared and agreed by and betwixt all the said parties thereto, That until such appointment should be made, or until the decease of the said *E. G.* it should, and might be lawful for the said *T.* and *W.* or the survivor, his executors, administrators and assigns, to put, place and continue at interest, the said 200*l.* on good real and personal securities, (but with the consent and approbation of the said *E. G.*) the interest and produce whereof should from time to time be paid to and received by such person or persons and for such uses and purposes and in such parts and proportions, manner and form; as

the

the said *E. G.* should from time to time, and at any time or times, during her life, notwithstanding her *coverture*, and whether she should be *covert*, or *sole* by any writing or writings under her hand, *direct* or *appoint*, to the intent that the same or any part thereof, might not be at the *disposal*, or *subject*, or *liable* to the *controul*, or *intermeddling* of the said *W. G.* but only at her own *sole* and *separate* *disposal*. And in default and until such direction and appointment to the proper hands of the said *E. G.* or otherwise should permit and suffer her to receive and take the same to and for her own *sole* and *separate* *use* and *benefit*, whose receipt under her hand, should from time to time, notwithstanding her *coverture*, be a sufficient *discharge* to the person or persons who should so pay the same for so much thereof for which such receipt should be given.

This deed was executed by all the parties and properly attested.

12th July, 1765. **I**NDENTURE between the said *W. G.* and *E.* his wife of the one part, and the said *I. T.* and *G. W.* of the other part, *reciting* the last deed, and that the said *I. B.* died *intestate*, and that *A. B. E. B.* and *S. B.* became entitled to the two-thirds of his personal estate, amounting to upwards of 200*l.* also that it was agreed that the said 200*l.* secured by the said *W. G.* on his bond, was intended, and should go and be accepted for the said *A. B. E. B.* and *S. B.* in part of their distributive shares of their said father's effects; and also that the money securities for money, goods, chattels and effects mentioned and contained in a schedule therein referred to, were accepted by the said *T.* and *W.* at the sum of 206*l. 15s. 11d.* in full *discharge* of the said 200*l.* due from the said *W. G.* on the said bond, and as far as they lawfully might in satisfaction of the distributive shares of the said *A. B. E. B.* and *S. B.* of their father's effects, it appearing to be sufficient for that purpose, *It is witnessed*, that in pursuance of the said *agreement*, and for the purpose aforesaid, the said *E. G.* by virtue of and under the power and authority in and by the said therein recited indenture, all and every other power and authority in her then vested or reposed, did *direct* and *appoint* the said 200*l.* should from the date thereof remain, continue and be in trust for the said *A. B. E. B.* and *S. B.* in equal shares as tenants in common, *And it is therein further witnessed*, that for payment of the said 200*l.* and satisfaction of the remainder of the distributive shares of the said *A. B. E. B.* and *S. B.* in their said father's effects, and also in consideration of 5*s.* paid by the said *T.* and *W.* to the said *W. G.* did grant, bargain, sell, assign and deliver to the said *T.* and *W.* All and singular, the monies, securities for money, goods, chattels and effects, mentioned and contained in the schedule thereto annexed and above referred to, and every part and parcel thereof, with the appurtenances, *To hold* to the said *T.* and *W.* their executors, administrators and assigns for ever, but

but in trust to keep and preserve or manage or dispose thereof as they should see proper, for the use, benefit and advantage of the said *A. B. E. B.* and *S. B.* their executors, administrators and assigns.

The said *E. G.* during her widowhood, took out letters of administration, in the proper ecclesiastical court for the diocese, to the effects of the said *I. B.* her former husband.

The children are all upwards of ten years old.

Query. If the mother has an appointment in the ecclesiastical court of the diocese, of the guardianship of her said children, will the trustees be well justified in delivering over the monies and goods to her, and what discharge shall they have?

Opinion. I am of opinion, that if the mother should be appointed guardian of her children in the ecclesiastical court, the trustees will not be justified in delivering over the monies and goods to her, but that they must preserve and keep the same for the benefit of the children, *on the trusts* reposed in them, and that the mother can give them no sufficient discharge.

Feb. 12, 1768.

R. Perryn.

C A S E.

IN the name of GOD Amen. I *W. C.* of —— Gent. being sick of body, but of sound and disposing mind, memory and understanding, DO make my will in manner following, (that is to say) First, I give and bequeathe unto my kinsman *I. C.* natural son of my niece *M. C.* ALL that my estates called *S*—— lying in the parish of *N*—— *B*—— in the said county, which I hold by a long lease, *And also ALL* that my other leasehold estates called *C*—— *B*—— and *P*—— in *N*—— *B*—— aforesaid, *To hold to him the said I. C.* his heirs and assigns, for and during all the term, &c. (as in folio 85, only writing initial letters for the names) declare this to be my last will and testament. *In witness* whereof, I the said *W. C.* have hereunto set my hand and seal, the 30th day of *May*, in the year of our lord 1763 *W. C.* + signed, sealed, published and declared by the said testator *W. C.* as and for his last will and testament, in the presence of us, who at his request, in his presence, and in the presence of each other have subscribed our names as witnesses thereto.

P. C. W. M. S. S.

W. C.

The

The testator died seized in fee simple of several estates and was possessed of leasehold estates for years, determinable on lives.

Query. If the residue passes the fee simple estates to *R. N.* in fee, no fee simple being devised in the will?

Opinion. I am of opinion, that by the residuary devise, *R. N.* takes the fee simple and inheritance of all the testator's freehold estates.

24th March, 1768.

Wm. Rivett.

C A S E.

E. Being lessee of a house in St. M.'s street under the usual covenants assigned the lease for a valuable consideration to *F. E.*

About 23d. Jan. last *F. E.* was arrested and carried to the King's Bench prison, and having remained there two months, on the 24th March, a commission of bankrupt issued out against him, and he was declared bankrupt, the act of bankruptcy being the two months imprisonment.

About the latter end of Feb. *E.* sent his wife to one *W. E.* a debtor to him in about 20*l.* upon a book debt, and with her a receipt for the debt, in exchange for this *W. E.* sent his note of hand payable to the bankrupt or order, three months after date.

With this note indorsed by the bankrupt, the wife was sent to the agent for the landlord of the house, who gave a receipt for it to this effect, *viz.* which when paid will be in full for half a year's rent due at Christmas then last.

At the time of the bankruptcy, there were not any goods upon the premises, but the assignees under the commission having since sold the lease, the house is now furnished, and the note not being paid, the landlord has threatened a distress, not only for the rent accrued since the bankruptcy, but for the rent for which the note was intended as a discharge, and which had accrued before the bankruptcy. The assignees are ready to pay the rent accrued since the bankruptcy, and it is not doubted but that *W. E.* and the agent for the landlord had notice both of the imprisonment and the insolvent circumstances of *F. E.*

Query. Can the landlord recover against *W. E.* the money due upon this note, if he can, will *W. E.* be liable to pay it again to the assignees, or can the landlord make his election, and

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and by giving up the note to the assignees, maintain a distress for, or recover by ejectment the rent due previous to the bankruptcy, and the issuing of the commission?

Opinion. There is no doubt but the landlord may distrain the goods of the vender, unless the receipt which he gave to each be a bar to it. The note for which that receipt was given, was not transferred to him by the indorsement; therefore I understand the receipt to be an acknowledgement of satisfaction only in the case of that note being paid voluntarily, which for want of an indorsement by a person having power to assign, he could not compel the payment of. I consider *E.* as a bankrupt from the day of the arrest. If the landlord may distrain for the rent, the assignees must make it good to their vendee. But I think the landlord must in such case, give up the note to the assignees, who might maintain trover for it. The note being in possession of the assignees, they may recover the 20*l.* against *W. E.*, if they chuse to sue upon that rather than the book debt; but they cannot have both. Upon the whole therefore, I think that the justice of the case is, that the assignees should pay the landlord his rent, and receive the 20*l.* of *W. E.*

21st Nov. 1767.

E. Thurlow.

C A S E.

THIS Indenture tripartite made the twelfth day of *May*, in the 25th year of the reign of our sovereign Lord *George* the second, by the grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, and so forth, *And in the year of our Lord 1752 Between T. D. of S—— C—— in the county of S——, gent. of the first part, W. E. of A—— in the county aforesaid, gent. of the second part, and W. C. of D—— in the parish of C—— in the county of S—— gent. and I. T. of A—— aforesaid, of the third part, Whereas, in and by indentures of *L.* and *R.* bearing date respectively the 28th and 29th days of *January* last past and made or mentioned to be made, between *R. F.* of *H——* in the county of *S——* miller, of the one part, and the said *W. C. T. D. I. T.* and *W. E.* gent. of the other part recited therein, as herein after is recited, or to the like effect. That Whereas, the said *R. F.* was considerably indebted to the said *W. T. D. I. T.* and *W. E.* much more than he was able to pay, and did agree to convey to, or in trust for them the equity of redemption of all and singular the premises therein and herein after mentioned, in part of satisfaction for the said debts, It is witnessed, That for the consideration aforesaid,*

and also in consideration of the sum of 131*l.* of good and lawful money of Great Britain in hand, well and truly to be paid by the said *T. D.* to *C. S.* and *J. S.* (executors of the last will and testament of *W. S.* late of *B*—, gent. deceased) being the same consideration monies mentioned to be paid them by the said *T. D.* in and by a certain indenture tripartite, bearing even date with the said recited release, and also in consideration of the sum of 5*s.* lawful money of Great Britain, in hand, well and truly paid by the said *T. D.* to the said *R. F.* before the sealing and delivery thereof, and for other valuable considerations, him the said *R.* thereunto moving, did grant, bargain, sell, alien, release and confirm unto the said *T. D.* and his heirs, *all* that mill-house, water-mill, and also that parcel of copyhold called the *H*— containing by estimation two acres, (be the same more or less) and also one close of pasture called *D*— *L*— lying near unto the said mill, containing by estimation, two acres, (be the same more or less) with all and singular the appurtenances unto the said mill-house and water-mill belonging or in anywise appertaining, situate, lying and being within the parish of *H*— aforesaid, and then were in the possession of the said *R. F.* his under-tenants or assigns, together with all ways, paths, pastures, waters, water-courses, mill ponds, mill wares, mill-stones, castarns, flood-hatches, profits, commodities, advantages, emoluments and hereditaments to the said premisses belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, profits and services of all and singular, the said thereby granted premisses and part and parcel thereof, and all the estate, right, title, just use, possession, freehold inheritance, trust, equity of redemption, possibility, challenge, claim and demand whatsoever, of him the said *H.* of, in, to and out of the said premisses and every part or parcel thereof, *And all deeds, evidences and writings touching and concerning the said premisses only, or only any part thereof, to be had and holden unto the said *T. D.* his heirs and assigns for ever, and to and upon the uses, trusts, ends, intents and purposes therein and herein after mentioned expressed and declared of and concerning the same, (that is to say) in trust, to sell and dispose of the same with all convenient speed, and by and with the monies arising by and out of the rents, issues, and profits of the said premisses, and by sale thereof, in the first place, to pay and satisfy all the principal and interest monies, to be paid to the executors of the said *W. S.* on a mortgage thereof made to the said *W. S.* and further and immediately after paying and satisfying the same upon this further trust, to pay and divide all the monies remaining in the hands of the said *T. D.* to and amongst them the said *W. C. T. D. I. T.* and *W. E.* equally between them, share and share alike, in proportion and according to the several and respective sums of money then to them respectively due and owing from the said *R. F.* and to, for and upon no other use, intent or purpose whatever, (as in and by the said recognizance, reference being thereto had may more fully and at large appear) And whereas the said*

sum of 131*l.* is not yet paid by the said *T. D.* to the said *C. S.* and *J. S.* executrix, and executrix of the said *W. S.* deceased, but remains still unsatisfied. *And whereas*, the said *W. C. I. T.* have contracted and agreed with the said *T. D.* and *W. E.* to pay unto the said *C. S.* and *J. S.* the said sum of 131*l.* and the growing interest thereon due on mortgage as aforesaid, *and to give to the said *T. D.* and *W. E.* the further sum of 41*l. 10s.* for the absolute purchase of the fee simple and inheritance of the said lands abovementioned.* Now this indenture witnesseth, *That for and in consideration of the said sum of 131*l.* of lawful money of Great Britain and the growing interest thereon, to the said *C. S.* and *J. S.* in hand, paid by the said *W. C.* and *I. T.* by and with the consent and direction of the said *T. D.* *W. E.* and in pursuance of the agreement above recited, the receipt whereof is hereby acknowledged, and also in consideration of the said sum of 48*l. 10s.* of like lawful money of Great Britain to the said *T. D.* and *W. E.* in hand, also, well and truly paid by the said *W. C.* and *I. T.* the receipt whereof they the said *T. D.* and *W. E.* do and each of them doth hereby acknowledge, and thereof, and of every part thereof do and each of them doth acquit and discharge the said *W. C.* and *I. T.* their heirs, executors and administrators, by these presents be the said *T. D.* at the instance and request, and by the direction and appointment of the said *W. E.* testified by his joining herein, and signing and sealing hereof, hath granted, bargained and sold, aliened, released and confirmed, and by these presents does fully, freely and absolutely grant, bargain sell, alien, release and confirm, unto the said *W. C.* and *I. T.* (in their actual possession, now being by virtue of a bargain and sale to them thereof made for one year by indenture bearing date the day next before the day of the date of these presents, and by force of the stat. for transferring uses into possession) and to their heirs and assigns for ever, *All that the aforesaid mill-house, water-mill, and all that parcel of ground allotted the *H.* containing by estimation two acres, (be the same more or less) and also one close of pasture, called *D—C—* lying near unto the said mill, (be the same more or less) with all and singular the appurtenances unto the said mill-house and water-mill belonging or in anywise appertaining, all which said premises are situate, lying and being within the parish of *H.* aforesaid, and late were in the possession of the said *R. F.* his under-tenants or assigns, together with all ways, paths, pastures, waters, water-courses, mill ponds, mill stones, mill-house, castarns, flood-hatches, profits, commodities, advantages, emoluments and hereditaments whatsoever to the said premises belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, profits and services, of all and singular the said hereby granted premises, and every part and parcel thereof, and all the estate, right, title, interest, use, possession, freehold inheritance, trust, equity of redemption, possibility, challenge, claim and demand whatsoever, of them the said *T. D.***

and *W. E.* of, in, to and out of the same premisses, and every part and parcel thereof, and all deeds, evidence and writings touching and concerning the said premisses only, or only any part thereof, *To have and to hold* all and singular, the said mill-house, water-mill, closes, lands, hereditaments and premisses herein before granted or meant, mentioned or intended so to be, with the appurtenances, unto the said *W. C.* and *I. T.* their heirs and assigns, *to the only proper use and behoof* of the said *W. C.* and *I. T.* their heirs and assigns for ever. *To be holden of the chief lord or lords of the fee* of the said premisses, by the rents and services therefore due, and of right accustomed. *And* the said *T. D.* and *W. F.* do for themselves severally and for their several heirs and administrators, and for every of them, covenant and grant to and with the said *W. C.* and *I. T.* their heirs and assigns by these presents, *that* they the said *W. C.* and *I. T.* their heirs and assigns and every of them, shall and lawfully may from time to time, and at all times hereafter peaceably and quietly, have, hold, use, occupy, possess and enjoy, all and singular, the said hereby granted premisses, with the appurtenances, and the rents, issues, profits and commodities thereof arising, accruing and growing, to have, receive and take *to and for* their own *separate use and uses*, without any manner of let, suit, trouble, eviction, ejection, molestation, interruption, hindrance, or denial whatsoever, of or by the said *T. D.* and *W. E.* or either of them, their or either of their heirs or assigns, or any other person or persons whatsoever lawfully claiming or to claim the same or any part thereof, by, from, or under him, them or any, or either of them; *And also*, that he the said *T. D.* hath not made, done or committed, or wittingly or willingly suffered to be made, done or committed any act, injury, or thing whatsoever, whereby or wherewith the said premisses above mentioned, or any part thereof are, is, shall, or may be charged or incumbered, in title or estate, or otherwise howsoever by his means or procurement only, *And lastly*, that the said *T. D.* his heirs and assigns, shall and will at all times hereafter, within the space of twenty years next ensuing the date hereof, at the reasonable request, and at the proper costs and charges in the law, of the said *W. C.* and *I. T.* their heirs and assigns farther make, do acknowledge, levy, suffer and execute, or cause and procure to be made, done, acknowledged, levied, suffered and executed, *all and every* such further and other lawful and reasonable act and acts, deed and deeds, conveyancies, assignments, and assurances in the law whatsoever, of the said premisses (be it by fine or fines, or any other measure of record or otherwise howsoever) for the further, better, more perfect and absolute assuring, sure making and conveying of the said premisses with the appurtenances unto the said *W. C.* and *I. T.* their heirs and assigns, that is, according to the limitation, or by their council learned in the law, shall in that behalf be reasonably devised, advised, tendered or required, *In witness* whereof, the said parties

above

above named have to these presents immediately set their hands and seals, the day and year first above written.

Executed by all parties.

Note. The mortgagee was paid his 131*l.* by *C.* and *T.* as were *D.* and *E.* the 48*l.* 10*s.* in full for their debts, but whether *C.* and *T.* paid it in equal moieties cannot be discovered. The estate was presumed worth more than the above consideration money, and that the over value was intended as a satisfaction to *C.* and *T.* of their debts, otherwise they would have had no share with the other creditors, *D.* and *E.* but *D.* *C.* and *T.* are all dead, and no information can be obtained of this dark transaction. The debts due from the estates were not equal, so that he that had the most money due to him paid as much of the mortgage debt, and 48*l.* 10*s.* as the other, the consideration was unequal, but as is before said, no account can be given of it.

You'll observe in the covenants, *C.* and *T.* were to receive the profits to and for their own *separate* use and uses.

C. and *T.* received the profits in equal moieties till the death of *C.* which happened about two years ago, but never gave any receipt for it, and *T.* dying soon after, the rents were received in like manner by their devisees.

Query. Whether *C.* and *T.* were tenants in common, or joint tenants, and to whom it now belongs? If a joint tenancy, no act was done by *C.* or *T.* to destroy it?

Opinion. I am of opinion, that by the limitation in the purchase deed, *C.* and *T.* in construction of law, must be deemed joint tenants, and unless something more appears on producing of their wills, I think the court of Equity will not interpose.

Query. If *T.* received the whole rent after the death of *C.*? And if he devised more than one moiety of the premises?

T. received no rent after the death of *C.*

He has devised the whole to his wife for her life, with remainder over in fee.

Opinion.

Opinion. As *C.* made no severance of the joint tenancy, he could not devise any part of the premises to *R. W.* by his will; and as *T.* who survived, hath devised the whole of the premises by description to his wife, with remainder in fee to *A. T.* subject to an executory devise over, I conceive those who claim under *A. T.* are well entitled to this estate.

April 6, 1768.

Wm. Rivet.

C A S E.

IN the Name of God Amen, I *W. C.* of *D*— in the parish of *C*— in the county of *S*— gent. being sick in body, but of sound disposing mind, memory and understanding, do make my will in manner following, (that is to say) *First*, I give and bequeath unto my kinsman *I. C.* of *F*— in the parish of *B*— in the said county, *All* that my messuage or tenement and garden, with the appurtenances, which I hold by a long lease. *And also, all that my household estates called *C*— *B*— and *P*—, in North *B*— aforesaid, to hold to him the said *I. C.* his heirs and assigns, for and during all the term and estates I have therein.* *Also* I give and bequeath unto my two kinsmen *W.* and *E.* sons of my kinsman *A. C.* late of *M*— in the said county, deceased, the sum of 500*l.* a-piece to be paid them by my executor, when they shall respectively attain the age of twenty-one years. But in case either of them shall die before he attains that age, *then* I give the legacy of him so dying to the survivor of them. *Also*, I give and bequeath unto my three nieces living at *M*— or thereabouts, sisters of my nephew *W. C.* of *M*— aforesaid, deceased, the sum of 100*l.* a-piece, to be paid them respectively within one year next after my decease, by my executor. *Also* I give and bequeath unto *M. H.* of West *L*— in the said county, yeoman, the sum of 40*l.* to be paid him by my said executor within twelve months next after my decease. *Also* I give and bequeath unto my servant *I. C.* now living with me, the sum of 10*l.* to be also paid within one year next after my decease. *Also* I give and bequeath unto *I. E.* of *M*— aforesaid, the sum of 100*l.* to be paid him by my said executor within twelve months next after my decease. *Also* I give and bequeath unto *I. W.* and *A.* sons and daughter of *H. C.* of *C*— in the said parish of *C*—, the sum of 100*l.* a-piece, to be respectively paid them when they shall respectively attain the age of twenty-one years. *Also* I give and bequeath unto *S. W.* of *B*— tanner, the sum of 10*l.* to be paid him by my said executor within one year next after my decease. *Also* all the rest and residue of my estates both real and personal, goods, chattels and effects whatsoever and wheresoever not herein before given and disposed, I give, devise and bequeath unto my kinsman *R. N.* of *M*— within the parish of *H*— in the county

ounty of S. gent. To hold to him the said R. N. his heirs, executors, administrators, and assigns, for ever; charged and chargeable nevertheless with the payment of the several legacies herein before me given. And I do hereby nominate, constitute and appoint, the said R. N. whole and sole executor of this my will.

And lastly, I do hereby revoke all former and other wills by me at any time heretofore made; and do declare this to be my last will and testament. In witness whereof, I the said W. C. have hereunto set my hand and seal, the 30th day of May, in the year of our Lord 1763, W. C. Signed, sealed, published, and delivered, by the testator W. C. as and for his last will and testament, in the presence of four, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

P. C. W. M. S. S.

May 30, 1763.

Wm. Clotbers,

In the name of God, Amen. I, I. T. of A——, in the county of S——, yeoman, being in perfect health, and of sound and disposing mind, memory, and understanding, do make my will in manner following; (that is to say), First, I give and bequeath unto my two grand-daughters, M. and D. one annuity or clear yearly sum of 5*l.* a-piece, for and during, and until they shall respectively attain the age of twenty-one years, or marriage, which shall first happen; to be issuing and payable out of my freehold estate at A——, in the county of S——; and I do direct the said annuity shall be received by Mr. R. N. of L——, and Mr. T. U. of L——, to be by them paid and applied to, and for the use and benefit of, my said two grand-daughters, for their education and maintenance. Also, I give and bequeath unto my said two grand-daughters the sum of 5*l.* a-piece, to be paid them when they shall respectively attain the age of twenty-one years; and in case either of them, my said grand-daughters, shall die before she shall attain the age of twenty-one years, Then I will and direct, that the legacy of 50*l.* shall be paid to the survivor; but if both my said children shall die before that age, Then I will and direct the said annuities to cease, and the said legacy to become lapse. And I do hereby charge and clogg, my said freehold estate and lands, situate at L—— aforesaid, with the payment thereof. Also I give and devise All that my said freehold estate and lands, situate at A—— aforesaid, (charged and chargeable with the said annuities and legacy), unto A. T. B. daughter of M. my now wife,

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late M. B. To hold unto the said A. T. her heirs and assigns, for ever. But in case the said A. T. shall happen to die before she shall attain the age of twenty-one years without issue of her body, Then, I give and devise the said estate and lands unto my said two grand-daughters, M. and A. D. their heirs, and assigns, for ever, as tenants in common. Also I give, devise, and bequeath, unto the said A. T. All that my close of ground, called C—— M——, situate in the parish of C—— C——, in the county of S——, To hold unto her the said A. T. her heirs, executors, and assigns, for all the term, and interest which I shall have therein at the time of my decease. Also I give, devise, and bequeath, unto my wife M. All that my freehold estate and lands, situate at L——, in the county of S——, charged and chargeable, nevertheless, with the payment of all such monies as shall be due thereon, by way of mortgage, or otherwise, at the time of my decease, To hold unto my said wife, and her assigns, for and during the term of her natural life, if she shall so long live and continue my widow and unmarried. And from and after her decease, or marriage, which shall first happen, I give and devise the said estate and lands at L—— aforesaid unto the said A. T. her heirs, and assigns, for ever. But in case the said A. T. shall happen to die before she shall attain the age of twenty-one years, and without issue of her body, Then I give, devise, and bequeath the same estate and lands at L—— aforesaid, unto my said two grand-daughters, M. and A. D. To hold to them, their heirs, and assigns for ever, as tenants in common. Also I give and bequeath, unto each of them my said grand-daughters, M. and A. D. a bed, bedstead, and furniture thereunto belonging, which was brought with them; and also a bell-metal pot each, and three pewter dishes each: Also, I give unto my said grand-daughters M. D. my clock. Also, all the rest of my personal estate, goods, chattels, and effects whatsoever, and wheresoever, I give, devise, and bequeath unto my said wife M. whom I nominate, constitute, and appoint executrix of this my will. And I do hereby nominate and appoint my friends the said R. N. and T. U. to be guardians and curators of the said A. T. during her minority, and to be trustees of, and to see this my will duly performed. And lastly, I hereby revoke all former and other wills, by me at any time heretofore made, and do declare this to be my last will and testament. In witness whereof, I have thereunto set my hand and seal, the 26th day of September, 1765, I. T. Signed, sealed, published, and declared, by the said testator as and for his last will and testament, in the presence of us, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses thereto,

M. M. M. . M. S. S.

September 26, 1765.

J. Tothill's will.

CASE.

IN 1630, the inhabitants of *T*——, at their own expence, and for their own convenience, erected a chapel within the hamlet; but before it was consecrated or opened, an agreement was entered into by the then vicar of *G*—— of the one part, and several of the inhabitants of the other part, touching the rights of the mother church.

This agreement is registered in the bishop of London's registry, with the act of consecration, and without which the bishop would not have consecrated the chappel.

The church of *T*—— is a very ancient building, and now wants a very large and thorough repair; and the building in and about *T*——, and with them the inhabitants, having of late years greatly increased, the church really stands in need of an enlargement, so as that the inhabitants may be decently accommodated.

On the 10th of July 1770, at a vestry held for *T*——, pursuant to due notice published in the church on the Sunday preceding, it was the unanimous opinion of the inhabitants present, that the pews and other parts of the church were in want of considerable repair, and that there was not a sufficient number of seats to accommodate the parishioners, therefore that the churchwarden should appoint proper surveyors to prepare a plan and estimate, and that he should give notice to the churchwarden of *T*—— side to employ a surveyor on behalf of *G*—— division, to attend with the surveyor on the *T*—— side, to examine and report their opininns concerning the repairs and increase of seats.

R. T. Esq; was appointed surveyor, and notice of the resolution of this vestry was communicated to the churchwarden of *T*——.

On the 5th of September, 1770, at a vestry held for *T*——, it was ordered, That the churchwarden and others should be desired to attend the churchwarden of *G*——, and inquire what repairs were purposed. And it was resolved, that Mr. A. should be appointed surveyor on the *T*—— side, to meet the *G*—— surveyor.

The surveyors met, and a survey and estimate being made, another vestry for *G*—— was held on the 1st of November, 1770, pursuant to due notice, to take into consideration the report of the surveyors,

respecting the necessary repairs and enlargement of the church. At this meeting a paper, intituled, "An estimate of the expence of the repairs which are absolutely necessary to be done in *G*— church," signed by the three surveyors, and amounting to 2000*l.* was read.

It was thereupon resolved, as the opinion of the inhabitants, whose names were thereunto subscribed, being the major part of the inhabitants at that meeting assembled, That the several particulars of repairs, alterations, and erections, therein after mentioned, were necessary for the making the said church as well more decent as more convenient for the inhabitants of the said parish. By this resolution, some of the particulars pointed out by the surveyors were rejected, and others altered, and the expence upon the whole greatly reduced.

Query. Are the inhabitants of *T*— liable to enlargement, rebuilding if necessary, and ornaments, as well as repairs, more particularly, are they liable to any, and which of the articles in the resolution of the 1st of November 1770?

Will they not be bound by the resolution formed upon the estimate of their own surveyor?

Can they by dint of numbers out-vote the inhabitants of *T*— on any point really necessary, or how should they proceed to get their church repaired?

Opinion. The inhabitants of *T*— have by their agreement, made themselves liable to the reparation of the church of *G*— from time to time, as they heretofore have been, on account of being allowed to erect a chapel for their ease and convenience; and if they had not bound themselves, they would have been obliged by law to contribute to all necessary repairs; for this general reason, because it would be unjust that an easement granted to one part of the parish, by allowing them to have a chapel appropriated to themselves, should in any way become a burden to the other parish, without whose consent, it is to be presumed, the permission of erecting a chapel would not have been originally obtained.—The reparation to which the inhabitants, having a chapel, are bound, extends not only to the fabric, and to every thing necessary to the preservation of that fabric, but also to the repair or renewal of decayed pews, ancient ornaments, surplices, bibles, books of prayer, linen, &c. which may be properly required for the decent performance of divine service; and such reparation, if wanted, the ordinary, either on view or complaint, or both, may compel the churchwardens

to make by his own authority, even if the majority of a parish, in vestry assembled, should be of a contrary opinion. The rebuilding or enlargement of a church, or the erection of additional pews, can only be effected by a vote of the majority of the parishioners, assembled on proper notice in a legal vestry. The inhabitants of a chapelry can no more be excluded from the vestry of the mother church than from the church itself, if they chuse to attend it; and whenever any business is to be transacted in which the chapelry-inhabitants have an interest, the chapel-wardens ought to have timely notice of the vestry-meeting given them by the churchwardens, that the inhabitants of the chapelry may attend, if they think it necessary so to do: if they should attend, and out-vote the inhabitants of the mother church, I think, that the minority could have no remedy in respect to rebuilding an extention of walls, or the erection of new pews upon new scites; but the ordinary, of his own authority, may order churchwardens to do all things which he finds necessary for the support of the ancient fabric, and for the purpose of performing divine service; and he has also power to enforce his orders on churchwardens, and to oblige them to make a rate to raise a sum adequate to the repair wanted, upon all the parishioners; who may be compelled by ecclesiastical censures to pay their respective proportions towards that rate, unless any individual can prove himself to have been unequally asselfed. If some of the inhabitants of *G*——, being joined by those of *T*——, should out-vote the rest of the parishioners in every thing now proposed, those of the district of the mother church might nevertheless be relieved in respect to all repairs really and absolutely necessary, by applying to the bishop of *London's* chancellor either to take a personal view, or to appoint surveyors to take a view for him, and report what is necessarily and immediately wanting for the support of the church, and the decent performance of divine service.—And as to the additional buildings and erections specified in the estimate, there is no doubt but that a vote for them may hereafter be obtained in vestry, (and of course a faculty) if the inhabitants of *G*—— are willing to take the expence upon themselves, and will declare their intention of not asselving the inhabitants of the hamlet of *T*—— towards such new work. But it will be time enough for the inhabitants of *T*—— to procure either of the methods by me proposed, after they tried their success at a general vestry on due notice.—

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In answer to the question, Whether the inhabitants of T—— are liable to contribute to any of the articles recited in the resolutions entered into on the 1st of November? I think, that if the inhabitants of the hamlet should not come to the vestry, or be out-voted, they cannot be obliged to pay for additions, and therefore they could only be compelled by a majority to contribute to new pews, where there were pews before, and of course to contribute towards part only of the third article, and towards the performance of the fifth, sixth, seventh, eighth, tenth, and twelfth articles, and part of the ninth, and that on this account, in order to avoid confusion, there ought to be two rates, the one for the repair of the old work only, with an assessment on all the parishioners; and the other for the new work, and the repairs occasioned by that new work, with an assessment on the inhabitants only.

Doctors Commons.

April 18, 1772.

I. C.

C A S E.

In Chancery.

Salway v. Philip's and others.

Cutter and others v. Mayor of London and Salway.

I have read the briefs in these causes, and I think there is, upon the evidence taken altogether, sufficient foundation for the court to direct an issue to try, whether the defendant *P.* was a bankrupt on or before the 27th of September, 1757; and Mr. *S.* must either pray such issue, or give up the point. How the evidence will turn out when the witnesses are examined and cross examined *vice versa* upon the trial, is a matter of which no certain judgment can be formed, and consequently no opinion can be given as to the event of the issue. The costs of the issue will depend on the verdict, and the verdict may draw after it the costs of these suits; but that is not altogether so clear. I am of opinion the deposition of the bankrupt may be read to prove the debts of the petitioning creditors, if he has obtained his certificate, and has executed a release of his allowances out of his estate, by the act 5 Geo. 2. but I think his deposition cannot be read to prove himself a bankrupt. The deposition taken in one cause may be read in the other, upon motion and order for that purpose, but not without an order, as the corporation of London are defendants in both causes; the counsel for Mr. *S.* (who is plaintiff in the original cause) can't open their answer; I mention this, because the brief in the cross cause is marked for the defendant.

April 7, 1760.

R. A.

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C A S E:

SOME time about the year 1680, several of the land-owners in the parish of *W.* purchased to them and their heirs, ALL the tithe of corn, grain, hay, flax, hemp, wool and lambs, and all other tithes whatsoever, as well great as small; and all other *Easter*-rolls, payments and duties whatsoever; arising, growing, happening or increasing, or to arise, grow, happen or increase, in or upon their several ancient freehold estates therein particularly specified, and also in and upon the commons and waste-grounds to the same respectively belonging. It is not known of whom these particular tithes were purchased, but 'tis supposed of somebody that was seized. And the conveyances of them ran much in the above form,

20 & 21 Nov. 1696. *D. M.* then seized of all the tithes not before sold, by lease and release, in consideration of 200*l.* conveyed to *I. B.* ALL that messuage in *W.* called the *New Hall, cum pert.* and all and singular the glebe lands, and all manner of tithes, obventions, oblations and hereditaments to the rectory of *W.* belonging, arising, happening, renewing or growing (except unto the said *D. M.* and his heirs, ALL such tithes, duties and offerings, belonging to the said rectory, as are commonly called *Easter-roll* and *surplice fees*, and the presentation and election of a minister or curate to the church of *W.* aforesaid.) TO HOLD to said *I. B.* his heirs and assigns for ever, under the yearly rent of 5*l.* payable half-yearly to said *D. M.* with a power of distress for recovery of the same. *D. M.* covenants that the premisses are free from incumbrances (except therein mentioned.)

I. B. who was grandfather to Mr. *T.* is dead, and he is now become seized of all the tithes conveyed to *I. B.* as above.

The parish of *W.* consisted of, till lately, several ancient houses and inclosed lands, of several cottages, and about 600 acres of common or waste ground, whereon the freeholders had right of common; but the soil was in the lord of the manor; and the freeholders being minded to have the commons inclosed, applied to the lord for his consent; and a proportion of the cottages and commons was set out to him for his right, and the remainder divided among the freeholders, in proportion to their estates; and in the year —, the commons were divided, and several freeholders in that year inclosed and improved their shares; and others then inclosed, but did not improve till a year or two afterwards.

Cases in Law and Equity.

Query. Is not Mr. T. under the conveyances made to Mr. B. as well entitled to the tithes of such parts of the commons as were allotted to the other sons who have purchased the tithes of their estates? And should these tithes commence payable from seven years after the inclosure made, or from seven years after the first improvement, or when otherwise?

And as several freeholders refuse to render him any tithes of such part of the common as were set out to them in respect of the estates of which they have purchased the tithes, in what court and manner, is it best and most adviseable for Mr. T. to proceed for the recovery of the same? Or must the landlords or tenants, or both, be made parties in such suit?

Opinion. As the several purchasers have purchased all the tithes arising upon their several farms, and particularly upon the commons and wastes, I think that in equity, the waste lands substituted in the place of the commons, should not pay tithes for the profits of the commons, as commons are gone, and lands put in the place of them, so that it would be contrary to equity to make the purchasers pay for the tithes of the commons a valuable consideration, and yet to make them in effect pay all the tithes of the commons in kind to the impropriator; perhaps at law it may be otherwise, but of this I doubt. As to the other lands appropriated to the owners of the estates, they will, I think, be liable to tithes; but I think the seven years exemption ought to commence from the time of the improvement, and not from the time of the inclosure. The words of the act are, "That where lands shall be improved, they shall from thenceforth, after seven years after such improvements, pay tithes;" So that the payment should, I think, commence from the end of seven years after the improvements, and not after the inclosure.

September 28, 1751.

R. Wilbraham.

C A S E.

E. G. being seized in fee of a real estate, by indentures of lease and release, dated on or about September last, grants and conveys the same to A. E. and his heirs, subject to a proviso, to be void on payment of 1100*l.* and interest at a certain day therein mentioned, which is yet to come; and having the right or equity of redemption to said premises, by his will, dated 13 November, 1758, expresses it to be his will and desire, that all his just debts that he should owe at the time of his decease, should be duly paid by his executrix,

executrix therein named, and then gives, devises and bequeaths all his real and personal estate, which was not then by any settlement or other writing settled upon his wife, and which he purchased since his intermarriage (except as therein mentioned) unto his wife *E.* her heirs, executors and administrators, for her to dispose of as she should think proper, by any deed, will or other writing, subject to the payment of his debts as aforesaid; and appoints his said wife executrix, and soon after died.

Testator, at the time of his decease, was indebted to several persons upon bonds in several sums, amounting to 2000*l.* or upwards; and it is computed that his real and personal assets will not be sufficient to satisfy the said debt on mortgage and the said bonds.

He also died indebted to several other persons, to the amount of 600*l.* or upwards, upon simple contracts.

Mrs. *G.* the executrix has renounced her right to the probate and execution of the said will, and thereupon administration of the goods, chattels and credits of the testator, with the will annexed, was granted by the consistorial court of the bishop of *L.* and *C.* to his brother *I. G.*

Query. Whether the money arising by sale of the testator's real estate, ought to be applied by the devisee in discharge only of the testator's debts arising upon specialties, in case such debts shall exhaust the whole; or whether, as equitable assets, it ought to be applied in discharge of the testator's debts in general, as well those owing on simple contract as by specialties, without preference to the specialty creditors? Or will it be necessary for the devisee to have the directions of a court of equity, as to the application of the money raised by sale of said estates?

Opinion. I am of opinion, that the specialty debts are not to have preference of the simple contract debts, but all must be paid *pari passu*: at law, the devisee of lands defeated the specialty creditors, who would only charge the heir in respect of real assets descended to him, which descent was broke by the devisee. The *stat. 3 & 4 W. & M.* indeed, has made such devises in general fraudulent against the creditors, and given them an action against the heir and devisee; but it still allows devisees for payment of debts, and the conveyance in that land so devised is become equitable assets, and must be distributed amongst creditors of all sorts, (except by judgment or mortgage) rateably and in proportion.

C A S E.

E G. being seized in fee of a real estate, by indentures of lease and release, dated in or about September last, grants and conveys the same to A. E. and his heirs, subject to a proviso to be void on payment of 1100*l.* and interest at a certain day therein mentioned, which is yet to come; and having the right or equity of redemption to said premisses, by his will dated 13 November, 1758, expresses it to be his will and desire, that all his just debts that he should owe at the time of his decease, should be duly paid by his executrix therein named, and then gives, devises and bequeaths, all his real and personal estate, which was not then by any settlement or other writing settled upon his wife, and which he purchased since his intermarriage (except as therein mentioned) unto his wife E. her heirs, executors and administrators, for her to dispose of as she should think proper, by any deed, will or other writing, subject to the payment of his debts as aforesaid; and appoints his said wife executrix, and soon after died.

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Query. Whether the money arising by sale of the testator's real estate, ought to be applied by the devisee in discharge only of the testator's debts owing upon specialties, in case such debts shall exhaust the whole; or whether, as equitable assets, it ought to be applied in discharge of the testator's debts in general, as well those owing on simple contract, as by specialties, without preference to the specialty creditors? Or will it be necessary for the devisee to have the directions of a court of equity, as to the application of the money raised by sale of said estates?

Opinion.

Opinion. The bond creditors are entitled to a preference out of legal assets; but for the equitable assets, they shall be equal only with the simple contract creditors.

Lincoln's Inn, 16 Feb. 1759.

Stephen Gardiner.

C A S E.

G. *M.* being seized in fee, by will dated 19 April, 1755, devised to trustees to the following uses; *viz.*

Interest for his grandson *G.* eldest son of his son *R.* in tail-male—Remainder.

Interest for *R.* second son of his said son *R.* in tail-male—Remainder.

Interest for the third, fourth, fifth, and all other sons of his said son *R.* in tail-male successively—Remainder.

Interest for all and every the daughter and daughters of his sons *R.* and *W.* as tenants in common—Remainder.

Interest for his said son *R.* for his life—Remainder.

Interest for his said son *W.* for his life—Remainder.

Interest for testator's right heirs for ever.

Mich. term, 11 Geo. 3. 1770. A common recovery with double vouchers was suffered, wherein *C.* was defendant, *F.* tenant, and *R.* the testator's son, and *G.* his grandson, vouchers of the estate so devised as aforesaid.

R. the father of *G.* the tenant in tail is joined as voucher in the recovery, tho' he had nothing but an estate in remainder under his father's will, but said *R.* did not join in the deed to make a tenant to the *preceipe*.

Query. Is this recovery good, so as to have the issue of *G.* and all remainders over; and whether, upon the whole, it would not be prudent (if not absolutely necessary) for a purchaser to take a new recovery, wherein the tenant to the *preceipe* shall vouch *G.* the tenant in tail alone, who shall vouch over the common vouchee in the usual form? And may a purchaser take a good title under the facts above stated?

Opinion.

Opinion. I think this recovery is good to cover all subsequent estates, to that of G. testator's grandson, for G. would lose his estate-tail, and the recompence in value would descend as the estate ought to have done. R. had nothing in the tail, but his remainder would barred merely by operation of law; and his being called upon, would, I conceive, be rejected, as nugatory and void. Notwithstanding this, I would not be understood to recommend a title to a purchaser, that possibly may afford foundation for litigation; and therefore, to remove every difficulty, it would be highly prudent to take a new recovery, which must, on account of the discontinuance, be with double vouchers in the manner abovementioned; that is, for the tenant to vouch G. alone, and G. the common youchée; I observe nothing else to raise a doubt upon the title, if G. be unmarried, and his grandmother dead.

October 26, 1773.

T. Ley.

C A S E.

June 25, 1673. I. K. in consideration of a marriage intended between A. and B. and other considerations, settles a messuage and lands at M— in Derbyshire, upon himself for life; then to said A. for life, for her jointure, and after the decease of the survivor, to the use of the heirs male of the body of the said I. upon said A. lawfully begotten; on failure of such issue, to the use of the said I. K. his heirs and assigns for ever.

August 5, 1770. By indentures of feoffment, executed by livery of seisin, I. K. the father, and I. K. the son, for valuable considerations, conveyed the aforesaid messuage and lands (without fine) unto H. I. and his heirs.

I. K. the father of A. his wife, and I. their son, have all been dead above twenty years; I. K. a grandson is now living, and about thirty.

Query. As said H. I. and J. his son have enjoyed the said estate under the said indenture of feoffment, upwards of forty years, without any claim or entry, is not the said estate-tail thereby discontinued, and the grandson barred by the statute of limitations? And I. T. wanting to borrow money, may he not mortgage the same?

Opinion. I apprehend, I. K. the grandson's right of intail under the settlement of 25th June, 1673, is not barred by the statute of limitations, and notwithstanding the long possession of H. and I. T. the purchasers, as the statute of limitations can no ways affect a right till it accrues, and till neglected for the time limited, and as I. K. claims under an intail which would not take place till the death of the grandfather and grand-

grandmother, when, from the state of this case, *J. K.* the grandson was an infant and continued so several years after, his right seems yet preserved by 2d *sect.* of *Stat. 21 Jac. 1. c. 16.* whereby a space of ten years after full age is allowed in case of infancy to preserve such right, which in this case does not appear to be fully expired.

August 31, 1741.

T. Coke.

C A S E.

MR. *T.* Mr. *H.* and Mr. *G.* have agreed for the purchase of the *B*—— estate each of whom are to advance an equal share of the purchase-money, and to have an equal share of the estate.

Mr. *T.* is a widower, and Mr. *H.* and Mr. *G.* being both married, 'tis imagined if the faid estate is vested in either of them by the conveyances, their wives will be entitled to their thirds, and that the parties will be put to the expence of levying fines in case they sell off any part of the premisses.

Query. In what manner would you advise the estate to be conveyed to the purchasers?

Opinion. I think the estate should be conveyed to the three purchasers and their heirs, as joint-tenants, and that they should declare the trust by a separate deed, and thereby make themselves tenants in common of the equitable estate. By this method, they will avoid giving a right of dower to their wives, and may sell the estate, or any part of it, without a fine. When the purchasers sell any part of the estate, the consideration money must be made payable to them by thirds; and being joint-tenants, must not covenant that they are all seized in fee; that covenant must be omitted, and they must covenant separately, that they have a power to grant one third. They must either covenant jointly or each for a third, but not each separately, and all three jointly for the whole.

September 16, 1754.

Eardley Wilmot.

C A S E.

C A S E.

THIS Indenture tripartite, made the _____ day of _____
 in the _____ year of the reign of our Sovereign Lord
 George the third, by the grace of God, of Great Britain, France and
 Ireland, King, defender of the faith, &c. and in the year of our Lord
 _____ between J. T. of the parish of _____, otherwise
 _____, and late of the _____ cheesemonger, of the first
 part; J. K. and R. T. of, &c. churchwardens and overseers of the
 poor of the said parish of _____, otherwise _____, of the
 second part; and W. M. of _____ baker, and J. H. of the parish
 of _____ baker, of the third part. WHEREAS the said J. T. is
 seized of and intitled unto, for and during the term of his natural
 life, of and in one undivided moiety, of, in and unto certain copy-
 hold premisses, situate, lying and being at _____ in the county of
 _____, which said undivided moiety is nevertheless subject to the
 payment of _____ pounds and interest, to F. I. late of the parish
 of _____ in the county of _____ spinster, descended by a certain
 mortgage. And the said F. I. was also in her life time seized to her
 and her heirs, of one other undivided moiety, of and in the said
 copyhold premisses. AND WHEREAS the said F. I. by her last
 will and testament, bearing date the _____ day of _____, in the
 year of our Lord _____, after some pecuniary and other legacies
 thereby given, and subject to the payment of her legacies, debts and
 funeral expences, did give, devise and bequeath, ALL her estate, both
 freehold and copyhold, to H. H. of _____ cheesemonger, to hold
 to him and his assigns upon this special trust, to sell and dispose of
 the same for the best price or prices that could be gotten, and by and
 out of the monies arising by the sale thereof, to pay and discharge
 her debts, legacies and funeral expences, if her personal estate should
 not be sufficient; and as to the rest and residue of the monies arising by
 such sale, to pay, apply and dispose thereof in such manner, and to
 such person or persons (except to the said J. T.) as her sister the
 wife of the said J. T. party to these presents, should by any deed or
 writing, notwithstanding her coverture, under her hand attested by
 two or more credible witnesses, direct or appoint the said F. I. de-
 claring it to be her intention and will, that such residue should be
 for the sole and separate use of her said sister, and not subject or
 liable to the controul or debts of her said sister's said husband, and of her
 said will constituted and appointed the said H. H. sole executor, as in
 and by such will, relation to the same being had, may more fully
 and at large appear. AND WHEREAS the said M. T. by her
 writing under her hand, and attested by three credible witnesses,
 that is to say, E. C. E. R. and B. R. (the said writing being made
 as and for the last will and testament of the said M. T.) such
 writing

writing reciting that her sister the said *F. I.* by the said will herein before-mentioned, had devised all her estate, both freehold and copyhold, to her executor the said *H. H.* to hold to him and his assigns upon the trusts in the said will of the said *F. I.* in that behalf herein before-mentioned, she the said *M. T.* in pursuance of the power vested in her the said *M. T.* in and by the said last will and testament of the said *F. I.* and so far as she the said *M. T.* might or could, did give, devise and bequeath unto the said *W. M.* and *I. H.* their heirs and assigns for ever, ALL her the said *M. T.*'s real, personal and copyhold estates, goods and chattels, plate and effects whatsoever, (except the several specifick plate, rings and cloaths in the said writing mentioned to be disposed of by her the said *M. T.*) *in trust*, thereby and thereout in the first place to pay and discharge all her the said *M. T.*'s just debts and funeral charges, by sale and disposal of all her personal estate; and after payment and satisfaction thereof, then to pay the rents, profits and produce of a moiety of a copyhold estate at *C* _____ in the county of *H* _____, (being the copyhold estate herein before mentioned) unto the said *I. T.* her husband, for and during the term of her natural life, and from and after his decease, the said *M. T.* by the said writing, did order and direct the same estate to be sold and disposed of by the said *W. M.* and *I. H.* (whom by the said writing the said *M. T.* appoints to be her executors) or by the survivor of them, for the best price that could be got for the same; and by and with the monies arising therefrom, or by sale of her personal estate, to lay out so much in government or other good securities, as would raise and pay the sum of 5*l.* a year, clear of all incumbrances, which she the said *M. T.* by the said writing, gave and bequeathed unto *I. M.* daughter of the said *W. M.* her heirs and assigns for ever. AND after the payment of all and every her debts, funeral charges, and the legacies by her given, the said *M. T.* did give the residu and remainder of her said effects, unto *I. C.* and *M. M.* in the said writing mentioned, and equally to be divided among them, share and share alike, as in and by the said writing and appointment, remaining in the *Prerogative Court of Canterbury*, relation to the same being had, may more fully and at large appear; and the said *M. T.* dying some time in or about the month of _____ now last past, thereupon, by virtue of the said writing and appointment of the said *M. T.* as also under the will of the said *F. I.* they the said *W. M.* and *J. H.* became entitled to such estate, whether real or personal, which the said *M. T.* exclusive of the said *J. T.* her husband, under the will of the said *F. I.* had power to dispose of; subject nevertheless to the several trusts and directions in the said writing and appointment of the said *M. T.* mentioned and directed; AND have taken upon them the execution of the said trust. AND whereas the said *J. T.* under and by virtue of the said writing or appointment of the said *M. T.* (subject to the payment of the debts and

funeral charges of the said *M. T.*) by virtue of the trust declared in the said writing and appointment declared so entitled to the rents, profits and produce of the moiety of the copyhold estate in the said writing or appointment mentioned, for and during the term of his natural life. AND WHEREAS the said *J. T.* being legally settled in the said parish of *St. B*—, otherwise *B*—, was by God's permission visited and deprived of his senses, (which since by God's grace he has happily recovered) and during the time of his being so deprived of his senses, the churchwardens and overseers for the time being of the said parish of *St. B*—, otherwise *B*—, laid out not only for the support and maintenance of the said *J. T.* but likewise for the procuring him to be cured, several sums of money, amounting in the whole to the sums of — which has since been paid and satisfied to the churchwardens and overseers of the poor of the said parish, parties to these presents, by and from the said *J. T.* himself, in full satisfaction of what was so due to the said parish, on the account herein before-mentioned, of which said sum of — they the said churchwardens and overseers of the poor of the said parish, parties to these presents, do (being thereunto enabled by an order of vestry of the said parish, bearing date the — day of — now last) acquit and discharge the said *J. T.* and his estate; AND WHEREAS it may so happen, that the said *J. T.* may hereafter be chargeable to the said parish; Now this indenture witnesseth, That the said *J. T.* hath appointed, ordered and directed, and by these presents doth appoint, order and direct, that if at any time hereafter, the said *J. T.* should by any ways or means whatever become chargeable to the said parish, and the churchwardens and overseers of the poor of the said parish for the time being should lay out and expend for the support and maintenance of the said *J. T.* any sum or sums of money, during such time or times as the said *J. T.* shall happen to be so chargeable to the said parish, that in every such case and cases, they the said *W. M.* and *J. H.* and the survivor of them, and every other person or persons whatsoever, claiming by, from or under them, or the survivor, of them, or any wise interested in the said moiety of the said copyhold estate, under and by virtue of the said writing and appointment of the said *M. T.* do, by and out of the rents, profits and produce of the moiety of the said copyhold estate, and so far as the same will, would pay unto the churchwardens and overseers of the poor of the said parish for the time being, all such sum and sums of money as the said churchwardens and overseers of the poor of the said parish for the time being shall lay out and expend for the support and maintenance of the said *J. T.* during such time or times as he the said *J. T.* shall so happen to be chargeable to the said parish, the residue of the rents, profits and produce of the moiety of the said copyhold estate, to be paid to such person or persons, as under the said *J. T.* would be entitled to the same; provided always, nevertheless,

nevertheless, and it is agreed by and between the said parties to these presents, that until the said *J. T.* shall become chargeable to the said parish, that they the said *W. M.* and *J. H.* and the survivor of them, shall and will from time to time, well and truly pay, or cause to be paid to the said *J. T.* or his assigns, the clear rents and profits of the said moiety of the said copyhold estate, for and during the term of his natural life. AND they the said *W. M.* and *J. H.* for themselves severally and respectively, and not the one for the other, and for their several and respective executors and administrators, and not for the executors or administrators of the other of them, do covenant, promise and agree, to and with the said churchwardens and overseers of the poor of the said parish, parties to these presents, and to and with each and every of them, and to and with their, each and every of their executors and administrators, that in case the said *J. T.* shall at any time hereafter by any ways or means whatever become chargeable to the said parish, and that the churchwardens and overseers of the poor of the said parish for the time being shall lay out and expend for the maintenance and support of the said *J. T.* any sum or sums of money, during such time or times as the said *J. T.* shall happen to be so chargeable to the said parish, that then the said *W. M.* and *J. H.*, or one of them, shall and will from time to time, by and out of the rents, and profits of the said moiety of the said copyhold premisses, and so far as the same shall clearly amount unto and extend, repay unto the churchwardens and overseers of the poor of the said parish for the time being, for the use and benefit of the said parish, all and every such sum and sums of money as the churchwardens and overseers of the poor of the said parish, shall have at any time laid out and expended for the maintenance and support of the said *J. T.* during such time or times as the said *J. T.* shall have happened to be so chargeable to the said parish. AND the said *W. M.* and *J. H.* do also for themselves severally and respectively, and not the one for the other, and for their several and respective executors and administrators, and not for the executors or administrators of the other of them, do by these presents covenant, promise and agree, to and with the said *J. T.* his executors, administrators or assigns, that they the said *W. M.* and *J. H.* or one of them, shall and will from time to time pay, or cause to be paid, to the said *J. T.* and his assigns, for and during the term of his natural life, the clear rents and profits of the said moiety of the said copyhold premisses which shall accrue and be paid, and payable at any time after the feast day of *St. Michael the archangel* last past, and before the said *J. T.*'s becoming chargeable to the said parish. *Provided* always, nevertheless, and it is agreed by and between the parties to these presents, that it shall and may be lawful in the first place, for the said *W. M.* and *J. H.* and for the survivor of them, to retain and take to him and themselves all and every such costs and charges as they or any of them shall have necessarily laid out and expended

in and about the execution of the trust reposed in them as aforesaid; any thing in these presents contained to the contrary thereof in any wise notwithstanding. AND they the said *J. K.* and *R. T.* parties to these presents, churchwardens and overseers of the poor of the said parish, by virtue of, and in pursuance of the said order of vestry, for themselves and their successors, do by these presents covenant, promise and agree, to save and bear harmless, and keep indemnified, the said *W. M.* and *J. H.* and each of them, their and each of their executors and administrators, and their and each of their goods and chattels, lands and tenements, of, from and against all and all manner of costs, charges, damages and expences, which they or any of them shall or may be obliged to pay, lay out, be put unto or sustain, not only by or on account of, by reason or means of any payment to be made of the rents and profits of the moiety of the said copyhold premisses as by virtue of these presents, but also for or by reason of the said *W. M.* and *J. H.* or of either of them, having already and before the execution hereof, delivered over to the said *J. T.* and the churchwardens and overseers of the poor of the parish, or some or one of them, for or in trust for the said *J. T.* any goods or chattels claimed or reputed to be the separate estate of the said *M. T.* and *J. T.* or either of them; AND the said *J. T.* in consideration of these presents, doth by these presents remise, release, and for ever quit claim unto them the said *W. M.* and *J. H.* and to each of them, all and all manner of action and actions, cause and causes of action, claim and demand whatsoever, which he the said *J. T.* now hath against them the said *W. M.* and *J. H.* or against either of them, for or in respect, or by reason or means of them the said *W. M.* and *J. H.* having possessed him or themselves of any goods and chattels whatsoever, which were in the possession of the said *M. T.* at the time of her death, and for or by reason, means or occasion of any other cause, matter or thing whatsoever, to the day of the date of these presents. IN WITNESS, &c.

Query. Are the executors of *M. T.* justified in entering into this deed, under the power and authority given them by the will of the said *M. T.*? If so, are they sufficiently indemnified by the provisional covenants entered into on their behalf by the churchwardens and overseers of the parish of *St. B*— and the said *J. T.*?

Opinion. As this act of the executors, seems solely calculated for the benefit of *J. T.* and it being the apparent intention of the testatrix *M. T.* to make a provision out of her copyhold estate for the said *J. T.* during his life, I think, were the executors called on for the step they have taken, a court of equity would justify them therein.

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